

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

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

24 CFR Parts 905 and 950

[Docket No. R-95-1742; FR-3646-F-02]

RIN 2577-AB43

Indian Housing Program: Amendments

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

ACTION: Final rule.

SUMMARY: This final rule adds a new part 950 to HUD's regulations. New part 950 contains the Indian Housing consolidated regulations that were previously set forth in 24 CFR part 905. In addition to moving the Indian Housing consolidated regulations from part 905 to part 950, the final rule amends a number of the Indian Housing consolidated regulations to simplify program processes, reduce the number of regulatory requirements, and provide more flexibility to local tribal and Indian housing authority officials in the administration of the Indian Housing program.

EFFECTIVE DATE: May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, Room 4140, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 755-0032. Hearing- or speech-impaired persons may use the TDD number (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review. These information collection requirements are not effective until such time that OMB grants its approval. The approval number will be published in the **Federal Register** through separate notice.

II. Background

On August 1, 1994 (59 FR 39072), HUD published a proposed rule that would add a new part 950 to title 24 of the Code of Federal Regulations to contain the Indian Housing consolidated regulations. The proposed rule would also make simplifying amendments to these regulations, in

order to accomplish the primary goal of giving Indian Housing Authorities (IHAs) greater discretion and responsibility in administering their programs. The preamble to the proposed rule described HUD's consultation with its six Native American Program Area Offices, the National American Indian Housing Council, regional IHA associations, and other IHA representatives. The preamble also described HUD's four-year trend to provide IHAs with administrative flexibility through regulatory revisions (59 FR 39072).

Consistent with the principles of Executive Order 12866, HUD has reviewed the existing Indian Housing regulations and the public comments received on the proposed rule, and with this final rule modifies the regulations to make them more effective, consistent, understandable, and sensible.

III. Comments on the August 1, 1994 Proposed Rule

HUD solicited public comments on the proposed rule amending the Indian Housing program. By the expiration of the public comment period on September 30, 1994, HUD had received 15 comments, all from IHAs and tribal leaders. This final rule contains several changes to the proposed rule in response to these comments, as further described in the following section, which summarizes the comments according to their relevant subparts and provides HUD's responses to those comments.

A. Subpart A—General

1. Applicability and Scope (§ 950.101)

One commenter stated that § 950.101(a)(1) should expressly acknowledge that this rule applies to operations and funds arising from HUD programs. The current language states that HUD provides financial assistance (funds) to IHAs for the development and operation (operation) of low-income housing projects in Indian areas. This part is applicable to such projects developed or operated by an IHA in an Indian area. HUD was unclear what additional language was requested and believes that the current language adequately addresses the comment.

2. Definitions (§ 950.102)

One commenter requested that the definition of Allowable Utilities Consumption Level (AUCL) and Heating Degree Days (HDD) should be adjusted. The commenter requested that Cooling Degree Days be added, as HDD is irrelevant to Indian country.

Section 508 of the Cranston-Gonzalez National Affordable Housing Act (Pub.

L. 101-625, approved November 28, 1990) directed HUD to incorporate into the Performance Funding System (PFS) a methodology to adjust utility consumption to account for Cooling Degree Days that was the same as the methodology used to account for Heating Degree Days. The impetus for this legislation was that IHAs in the sunbelt that had to pay higher utility bills for air conditioning during hot summers wanted an adjustment in their PFS payments to account for the increased utility consumption. HUD published a proposed rule, and based on the comments received, HUD implemented an approach to greatly simplify the PFS by dropping all heating and cooling degree day adjustments. The final rule implementing this action was published in the **Federal Register** on October 13, 1994 (59 FR 51852). Additional information on this change can be found in the preamble of that rule.

There were a number of comments concerning the definitions of Adjusted Income and Annual Income. These suggestions included an increase in deductions, lowering the 30 percent rule, counting only the income from the head of household, counting only the income of head of household and spouse, and using net income rather than gross income. Also, a commenter requested that both child care and travel expenses be eligible deductions.

HUD appreciates the many comments received on the definition of Adjusted Income and Annual Income. In response to the comment to allow both travel and child care as deductions, section 103(a)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) amended section 3(b)(5) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) to allow for both deductions. HUD implemented this change by PIH Notice 93-23 dated May 19, 1993. The proposed rule included this revision, and the same language appears in this final rule. With regard to the other comments on Adjusted Income and Income, these terms are defined in the United States Housing Act of 1937. Section 3(b)(4) of that Act defines "income" as "income from all sources of each member of the household." Section 3(b)(5) contains the statutory definition of "adjusted income." The Office of Native American Programs is developing a legislation package for the program, and it will carefully review all comments as it prepares this proposal.

One commenter stated that the definition of disposition should exclude references to real estate, since the IHAs do not transfer any interest in the "real

estate." The commenter stated that the most that IHAs transfer by a quit claim deed is the remaining portion of the leasehold interest in the underlying land, together with the improvements. HUD agrees with the comment as it relates to trust and allotted land. However, there are many cases in Indian areas in which interest in the real estate is transferred. Due to these situations, HUD has not changed the definition.

One commenter requested that the tribal government and not HUD define low-income family based on a determination of tribal median income and adjustments to income due to family size, construction costs, or other local variations. Another commenter stated that IHAs should be able to establish their own income limits based on the tribes' economies, not on the local communities.

The definitions of low- and very low-income are found in the United States Housing Act of 1937. By statute, the definition of very low-income is tied to "50 per centum of median family income" for an area, and the definition of low-income is tied to "80 per centum of the median family income" for the area (42 U.S.C. 1427a). As required by statute, the meaning of the term "area" is affected by whether the local median family income is less than the respective State's nonmetropolitan median family income. In addition, the statute provides for adjustments to income limits for areas with unusually high or low incomes in relation to housing costs. Income limits are published annually by HUD. If an IHA or tribe feels that the median income for its area is not appropriate, they should contact the local HUD Office to obtain information on how to proceed with a request for a change.

3. Applicability of Civil Rights Requirements (§ 950.115).

A commenter stated that the civil rights quotation in § 950.115(a) in the proposed rule is misleading and the definition should additionally explain that these equal protection and due process rights do not apply if they violate customs, traditions, and practices of the tribe. HUD agrees with this comment and has adjusted the definition in the final rule to include this statement.

A commenter suggested that HUD should strike the reference to handbooks in § 950.115(a)(3) of the proposed rule. This commenter also requested that the reference to Title VI, the Fair Housing Act, and the Americans with Disabilities Act in § 950.115(b) of the proposed rule be removed if they are not applicable to IHAs established by exercise of a tribe's

power of self-government. HUD agrees with both of these comments. HUD has removed the reference to handbooks and the language regarding the nonapplicability of those statutes in this section.

4. Displacement, Relocation, and Acquisition (§ 950.117)

One commenter stated that upon the request of a resident, an IHA should be allowed to relocate a resident temporarily to his or her traditional home even if it is not decent, safe, and sanitary, and the family should be eligible for relocation assistance. HUD agrees with this comment and has revised the language in § 950.117(b) for temporary relocation.

A commenter stated that in § 950.117(c)(2), the word "comparable" should be removed since it is subject to many interpretations, and that the IHA should be allowed to use any available Indian housing unit as a replacement. The commenter also requested that HUD add the following language: "Houses that do not meet Section 8 fair market rent would be allowed for comparable housing units." HUD is unable to eliminate the term "comparable" in this section of the rule. This term is defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4605), as amended. The use of "comparable" is also required by the Department of Transportation's government-wide rule implementing the URA (49 CFR part 24). The 1987 amendments to the URA specify that the Federal agencies covered by the URA no longer have independent statutory authority to promulgate their own separate URA regulations, and in implementing the URA they must follow the regulations published by the lead agency, which is the Department of Transportation.

5. Compliance With Other Federal Requirements (§ 950.120)

Multiple commenters suggested that the wage rate requirements of the Davis-Bacon Act (§ 950.120(c)) should be waived for Indian housing. However, the applicability of the Davis-Bacon Act to Indian housing is required under Section 12 of the United States Housing Act of 1937, as amended, and is not subject to waiver by HUD.

6. Establishment of IHAs by Tribal Ordinance (§ 950.126).

Several commenters agreed with § 950.126(b) of the proposed rule, which allows a tribe to determine the form of ordinance. However, one commenter objected to leaving ordinance terms and

wording up to tribes. Another commenter felt that HUD was leaving the ordinance up to the tribe, and therefore approval by the Department of Interior (DOI) should not be necessary. As stated previously, the intent of the revised regulation is to provide greater flexibility and control to IHAs and tribes in the administration of housing programs. This is the reason for allowing tribes the ability to determine the form of ordinance that is applicable for its area. However, HUD agrees with the comment regarding DOI approval and has removed the language regarding the need for such approval.

A commenter stated that § 950.126(d) of the proposed rule should be revised to require only those documents that demonstrate that an authority has been properly established. HUD agrees with this comment and has revised this section accordingly.

7. IHA Commissioners Who Are Tenants or Homebuyers (§ 950.130)

One commenter stated that they agreed that the change in the rule that explains the role of a commissioner when he or she faces a decision that affects them personally is an excellent idea. HUD appreciates the comment regarding this section.

8. Administrative Capability (§ 950.135)

One commenter agreed that the Administrative Capability Assessment (ACA) should be used with other tools to evaluate the need for technical assistance. Two commenters stated that there should be another appeal level, and one commenter requested that all appeals should go to HUD Headquarters. One commenter stated that the reference to HUD handbooks and other program requirements should be deleted since these do not constitute statutory or regulatory authority that is binding on the IHAs. One commenter stated that sanctions should be clearly defined in § 950.135(f)(2), and limitation on appeals should be eliminated from § 950.135(g)(2).

HUD agrees with the comment suggesting the removal of the handbook references in this section and has revised this section in the final rule. In response to the comments on the appeal process, HUD finds that the current appeal process will provide IHAs with the ability to appeal any decision regarding funding. All other appeals will not affect any funding. Furthermore, without limits to the appeal process, HUD would not be able to initiate corrective action when it finds a serious deficiency.

B. Subpart B—Procurement

1. General Comments.

Several commenters suggested minor changes in wording throughout the subpart to improve the readability and clarity of the language. For the most part, HUD agrees with these comments and has incorporated the suggested wording.

2. Procurement Standards (§ 950.160)

One commenter wrote that the \$25,000 limit on small purchases created additional costs for IHAs. Since the publication of the proposed rule on August 1, 1994, Federal procurement regulations have increased the small purchase limit to \$100,000. HUD has adjusted this section accordingly.

Another commenter wrote that HUD should allow open market purchases from petty cash for commonly used supplies or purchases of less than \$500. Such purchases are allowed within existing regulations that are not changed by this rule.

3. Methods of Procurement (§ 950.165)

One commenter suggested the addition of language in § 950.165(c) that specifically states that an IHA may reject all proposals for soundly documented reasons and has the right to waive certain irregularities. General procurement methods currently allow these practices, and therefore they have not been added to this rule.

4. Other Requirements Applicable to Development Contracts (§ 950.170)

One commenter suggested that the bonding alternative allowing a 25 percent letter of credit should be deleted. HUD disagrees with this suggestion. Each of the options for surety other than 100 percent performance and payment bonds are included in the rule to enable IHAs to assist small or disadvantaged contractors that have the ability to perform but do not have the resources to pay for a performance and payment bond. IHAs have the option but are not obligated to use this option in their procurement.

Another commenter suggested that the rule should clarify that performance and payment surety continue through a contract's warranty period. The term of the surety is contained in individual contract provisions, and therefore HUD does not believe it should be added to this rule.

5. Indian Preference Requirements (§ 950.175)

HUD received a general comment that the revised Indian preference

requirements are not simplified from the previous rule. In these revised regulations, HUD has tried to accomplish two objectives. The first objective was to make the Indian Preference requirements less prescriptive, enabling IHAs and their tribes to determine the best methods for providing Indian preference in their programs. The second objective was to make HUD's Indian preference requirements identical across its programs to remove confusion for participating tribes. HUD is also revising the Indian Community Development Block Grant and Indian HOME program regulations to mirror the Indian Housing regulations. HUD believes it has met both these objectives but is receptive to any additional suggestions that would improve the Indian preference requirements.

6. Insurance (§ 950.190)

One commenter suggested that this section is unnecessarily complex and long. The contents of this section provide the basic requirements for insurance coverage, however, and therefore HUD has decided not to make any reductions at this time.

C. Subpart C—Development

1. General Comments

Several commenters suggested minor changes throughout the subpart to improve the readability and clarity of the language. For the most part, HUD agrees with these comments and has incorporated the suggested wording.

2. Allocation (§ 950.205)

One commenter suggested the conversion of the allocation method from a competitive nature to a formula funding. This commenter wrote that this would enable IHAs to better anticipate funding, thereby allowing for better long-range planning. HUD is investigating the potential for formula funding for development allocations; however, a change to a formula funding basis may require statutory authority.

3. Eligibility (§ 950.207)

In response to general comments on clarity within the rule, HUD has added a new section that specifies the eligibility requirements to apply for new Indian Housing development. Included in this section are performance thresholds not previously specified in the regulation but relied upon by HUD in determining eligibility.

4. Authority for Proceeding Without HUD Approval (§ 950.210)

Several commenters suggested that the rule would provide HUD great

latitude in requiring an IHA to obtain HUD approval of processing steps. In reviewing this section, HUD agrees that its wording is too broad and not fully consistent with administrative capability remedies contained in § 950.135. Accordingly, HUD has clarified this section to require HUD to follow the provisions of § 950.135 in its determination of performance deficiencies and remedies. Additionally, HUD has removed the examples of performance deficiencies.

This final rule consolidates time constraints on development in this section from throughout Subpart C. In response to several comments, the time constraints contained in the regulation are: (1) 24 months from program reservation to construction start, (2) 30 months from program reservation before HUD can recapture funds, and (3) six years from program reservation to closeout of development.

5. Production Methods (§ 950.215)

HUD received several comments that questioned the clarity of the production method descriptions. Upon review, HUD has determined that descriptions of production methods are more appropriately contained in program guides or handbooks. Accordingly, HUD has deleted the brief descriptions of production methods in this section.

Several comments were received concerning the definition of an IHA attachable asset required as security for force account construction approval and the need for IHAs to provide such security. Attachable assets are those assets that are unencumbered by restrictions on their use and that can be liquidated to pay for any overruns in the development of the project. HUD has reevaluated the risk associated with force account construction and has modified the surety requirements in this final rule. The final rule (§ 950.215(b)) allows Area Offices of Native American Programs (Area ONAPs) to approve the force account method without requiring the tribe or IHA to provide specific security to cover excess costs if the IHA agrees to construct the project in small stages with additional HUD oversight.

6. Total Development Cost (§ 950.220)

One commenter suggested that the \$1,500 Mutual Help contribution and development funded counseling should be deleted from the program. However, the \$1,500 Mutual Help contribution is required by the statute. HUD has modified the counseling provision to make it optional for IHAs.

One commenter suggested that the rule should include a detailed description of how total development

cost (TDC) standards are computed. By statute, HUD is required to establish TDC standards using two national cost indices, which are multiplied by 1.6 for elevator type structures and 1.75 for nonelevator structures. Total development cost standard requirements are published periodically in a departmental notice. HUD believes that such a notice is the appropriate vehicle for conveying TDC requirements, and therefore HUD has not adopted this suggestion.

One commenter suggested that the rule should require all projects to be funded at the full TDC standard. The TDC standard establishes the maximum allowable cost for a development and is not intended to provide a prescribed amount required to develop a project. Accordingly, HUD has not adopted this comment.

One commenter suggested that the rule should require HUD Area ONAPs to obtain the input of tribes in the determination of the adequacy of TDC areas. The TDC notice provides for IHAs to request a HUD assessment of the adequacy of TDC areas within their jurisdiction. HUD believes that this provision of the notice serves to obtain tribal input. Therefore, HUD has not adopted this suggestion.

HUD has significantly reduced § 950.220 of the proposed rule by deleting process items that are included in periodic TDC Notices, the discussion of the program reservation, and HUD cost review requirements. Additionally, HUD has rewritten the resident training and insurance subsections, and has added a separate subsection that includes the exception of donations and off-site water and sanitation facility infrastructure costs from the TDC calculation. HUD has modified the 30 month for construction cost and moved it to § 950.207.

7. Application (§ 950.225)

To provide greater clarity in section titles, the Application section has been divided, with items involving program reservation and annual contributions contract (ACC) execution moved to a new section 950.227. HUD has deleted from the rule process activities that are included in the annual Notice of Funding Availability. HUD has also added a new paragraph (c), which clarifies the criteria under which HUD may approve new units for state-created IHAs.

8. Program Reservation and ACC Execution (§ 950.227)

HUD received several comments supporting the elimination of the 3

percent limitation on initial planning funds.

One commenter suggested that the limitation on planning funds was too vague. Upon review, HUD has determined that since such limitations are included in the ACC, they are unnecessary in this rule.

To further clarify the change to a grant program, HUD has changed the term "program reservation" to "development grant approval" throughout the rule.

To streamline the development process, HUD has modified subpart C to remove the two-step process for executing the ACC for development. This final rule provides for execution of the ACC (or amendment) in the full amount of the grant upon approval of the grant. Amendments to the ACC would only be required if the character of the development were changed by the IHA.

This final rule also adds a new section 950.229 to address the process for establishing limits on the IHA's ability to incur obligations under the ACC. This section consolidates requirements for submittal of development cost budgets and contains the existing provision for comprehensive housing plans.

9. Project Coordination (§ 950.230)

One commenter suggested that HUD should participate in project planning in order to provide technical assistance if requested by the IHA. The current wording does not prohibit HUD staff from participating in planning activities if the IHA requests, and HUD has sufficient staff resources available to provide such assistance. The decision to provide voluntary technical assistance is a joint decision of the IHA and HUD. HUD does not find that additional clarifying language is needed.

10. Site Selection Criteria (§ 950.235)

HUD received several comments supporting the removal of the one acre limitation on site size. One commenter objected to prohibiting the cost of access roads as a project expense. With the exception of off-site water and sanitary facility infrastructure that Congress includes in Indian Housing appropriations, infrastructure development outside the boundaries of the IHA site(s) are not eligible project expenses. In the case of off-site access roads, Congress provides funding through the Bureau of Indian Affairs (BIA) to construct off-site roads. Accordingly, HUD has retained the restrictions on off-site access roads in this rule.

11. Types of Interest in Land (§ 950.240)

Several commenters objected to the requirement for HUD approval of the form of lease. Because of the period of affordability requirements contained in the statute and in the ACC, HUD has a continuing interest in the availability of dwelling units for occupancy by eligible participants. It is in HUD's best interest to assure that the provisions contained in site leases provide sufficient protection for the government in this area. Therefore, HUD has retained the requirement for a HUD approved form of lease.

Another commenter objected to allowing leases of unrestricted fee simple land in lieu of outright purchase. In most instances, an IHA will prefer to purchase fee simple land instead of entering into a long-term lease. However, prohibiting leasing of unrestricted fee simple property would, according to HUD, unduly restrict IHA options in securing building sites.

Another commenter suggested that HUD allow tribes to build off tribal lands. There is no specific prohibition against an IHA using non-tribal sites. IHAs must operate within the jurisdiction of the tribe, which is generally within the tribe's reservation boundaries. If the IHA wishes to use sites not within the jurisdiction of the tribe that are subject to property taxes, they must obtain the cooperation of the taxing body.

12. Environment (§ 950.247)

The Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103-233, approved April 11, 1994) provided for tribes or local governments to assume the responsibilities for environmental assessments of public and Indian housing sites. To implement this requirement, HUD is revising its environmental review regulations at 24 CFR part 58 to include the Indian Housing program. HUD is also adding a new section 950.247, Environment, in this rule to provide for local completion of the environmental assessment.

13. Site Approval (§ 950.250)

HUD has decided to remove § 950.250(b)(3) from the final rule. This section had required IHA cooperation to enable HUD to complete the environmental assessment. Under the final rule, the tribe or local governing body will complete the environmental assessment.

One commenter suggested that there may be unnecessary duplication in the review of sites, and that HUD and the BIA should adopt a single environmental assessment procedure.

HUD and the BIA have made continuing efforts to coordinate environmental review procedures to minimize duplication of efforts. With the transfer of environmental review responsibility, the tribe or local government will work with the BIA in this regard.

One commenter suggested that sites should be inspected only when the IHA deems it appropriate. HUD finds that it is impossible to approve a site for inclusion in a development without first making an on-site visit to determine the suitability for development. Accordingly, HUD has not adopted this suggestion.

Another commenter suggested that environmental reviews should be limited to sites larger than 10 acres. The National Environmental Policy Act of 1969 (42 U.S.C. 4332) requires an environmental assessment for any development action regardless of the size of the site.

14. Design Criteria (§ 950.255)

HUD received a number of comments objecting to requiring newly constructed Indian housing units to comply with specific building codes. This requirement is not new. Due to the investment of public funds and the long-term association between HUD and the IHA during the operating period, HUD finds that it is necessary to require minimum building standards. National building codes, such as the Uniform Building Code or the Uniform Plumbing Code, provide minimum standards for such development. HUD encourages tribes to develop and adopt building codes that reflect the needs of their areas. In the absence of adopted tribal codes, IHAs must rely on local, state, or national codes.

HUD has added a new subsection to specify that the IHA must perform a life cycle cost analysis in the IHA's selection of utility combinations.

15. IHA Development Program (§ 950.260)

Several commenters stated that HUD's suggestion in the proposed rule (§ 950.260(a)(2)) that a development program should be submitted within 18 months of program reservation date was inappropriate since IHAs rely on schedules prepared at the project coordination meeting to reach development program submission. HUD agrees with these comments and has removed the subsection containing this suggestion.

In response to general comments for further streamlining of the process, and in order to recognize program evolution to a grant basis, HUD has removed the requirement for a development program

from the rule. In its place, HUD has specified the documents that are actually required prior to the IHA proceeding with final planning, bid/proposal solicitation, and construction start. These documents include a development cost budget reflecting the anticipated cost of constructing the project, certifications of compliance with program requirements, and project characteristics that were previously gleaned from the development program documents (§ 950.260(a) of the final rule).

16. Construction and Inspections (§ 950.265)

One commenter suggested replacing the term "program requirements" with "all ACC, statutory, and regulatory requirements." HUD agrees and has made the modification.

Several commenters suggested that HUD should not monitor project construction if it was unwilling to perform project inspections. Congress has charged HUD with the oversight of appropriated funds. To properly perform this duty, HUD must monitor IHA compliance with all ACC, statutory, and regulatory requirements of the program, including the IHA's administration of its construction contracts.

Several commenters suggested that HUD should either do away with the 30 month requirement for reaching construction start or reduce the time to 24 months. The final rule has consolidated in § 950.210 all references to this 30 month period. HUD has changed the wording of the 30 month requirement to more closely follow the language of the statute, which limits HUD's ability to cancel a project before the end of the 30 month period. HUD has also adopted the suggestion that construction start should occur within 24 months after the program reservation date, and has added language that requires HUD, subject to the availability of resources, to provide technical assistance to an IHA that has not reached construction start within the 24 month time-frame.

In response to numerous suggestions for overall streamlining of the rule, HUD has rewritten this section to simplify the requirements.

17. Correcting Deficiencies (§ 950.280)

HUD received a number of comments suggesting that HUD should be required to fund the correction of any design or construction deficiencies. HUD does not agree that it is obligated to fund the correction of all design or construction deficiencies. Under program requirements, IHAs are required to have

in place adequate systems to assure new developments are properly designed and constructed. As HUD attempts to remove its controls over IHA decisionmaking by conveying the authority to manage its developments, it would be inconsistent not to convey the responsibility to adequately manage those developments, as well. HUD does maintain the option of funding design or construction deficiency corrections when it believes it is appropriate to provide such funding.

One commenter suggested that the requirement for HUD approval to spend existing funds to correct design or construction deficiencies should be deleted. HUD agrees that, along with the responsibility to assure such corrections are made, the rule should provide the authority to spend existing funds appropriately, including remaining project development funds, operating receipts, or other funds available to the IHA. Therefore, HUD has removed the requirement for its prior approval.

18. Fiscal Closeout (§ 950.285)

HUD has added language to this section emphasizing the importance of completing development grants in a timely manner. Under the limited oversight procedures now in effect for Indian Housing development, it is critical that grants be completed and the accounts audited as soon as possible after the date of full availability (DOFA).

19. Reformulation

HUD received several comments suggesting that a new section be added authorizing IHAs to reformulate project funds at any time for any purpose without prior HUD approval. HUD provides funds to an IHA to develop a specified project. Consistent with other grant programs, if an IHA wishes to redirect project funds, a program modification must be proposed and approved before such reformulation can proceed. HUD has delegated the authority to approve reformulations to its Area ONAPs, which will expedite processing of requests by IHAs.

D. Subpart D—Operation

1. Admission Policies (§ 950.301)

One commenter stated that § 950.301(a)(2)(iii) of the proposed rule needs to be strengthened to read "participants or the physical, financial or environmental aspects of the project" to help deal with applicants with a history of nonpayment or unit damage. Each IHA has the ability to develop admission policies that address the needs in its area. HUD's goal is to provide greater discretion to the IHAs

administering the housing program. Therefore, HUD does not feel that these additional regulatory requirements should be added for all IHAs. However, each IHA is encouraged to develop admissions policies to address individual needs, such as the ability to deal with applicants with a history of nonpayment or unit damage.

A commenter stated that the proposed language "for not less than 70 percent of the units" in § 950.301(a)(2)(iv) is a marked change from the earlier draft figure of 30 percent of the units. The commenter stated that the 30 percent figure seems high enough considering that others have been on the waiting list for years. The language in the current Indian housing regulation states that only 10 percent of non-Federal preference holders are eligible for admission in a given year. Section 501 of the National Affordable Housing Act amended the percentage to allow for 30 percent of non-Federal preference holders to be eligible for admission. The language in the proposed rule stated that the IHA shall develop tenant and homebuyer selection criteria designed: "(iv) For not less than 70 percent of the units made available for occupancy in a given fiscal year, to give a preference in the selection of participants who at the time they are seeking housing assistance, are involuntary displaced, living in substandard housing, or paying more than 50 percent of family income for rent" (Federal preference).

In the final rule, HUD will handle differently the issue of counting Federal preferences. The final rule on Preferences for Admission to Assisted Housing, published in the **Federal Register** on July 18, 1994 (59 FR 36616) revised the tenant selection preference provisions. The rule implements a statutory change that decreases the number of families that must be admitted on the basis of qualifying for a Federal selection preference, and specifically authorizes the adoption of local selection preferences by IHAs to be used in admitting some applicants. Because of several comments regarding how to count admissions, the language in the final rule frames the "counting" of admissions in terms of a limit on the number of "local preference" admissions that can be made during a one-year period. Only 30 percent of annual admissions may be families selected on the basis of local preference. Under that rule, a family that qualifies for a "Federal preference" is not precluded from being admitted on the basis of its "local preference," but the admission would be counted against the IHA's local preference limit, and the selection is made without regard to that

Federal preference. A more detailed discussion of these preferences can be found in the preamble to that final rule. Changing the percentage would require Congress changing the statute.

Another commenter recommended that the language in § 950.301(a)(2)(iv) "at the time they are seeking housing assistance" be changed to "at the time an appropriate housing unit becomes available for their use," since these two events could occur at different times. It would be difficult to justify attaching a Federal preference to an applicant and then carrying that applicant for several months until a unit becomes available, if the applicant had found decent, safe, sanitary, and affordable housing in the interim.

The reference to which this commenter refers has been revised in the final rule regarding Preferences for Admission to Assisted Housing (59 FR 36616, July 18, 1994). That rule amended § 905.301, and included a section on verification of preference at § 905.304(c)(3). HUD believes that rule addresses the commenter's concern regarding the timing of applicant verification.

Another commenter stated that admission requirements continue to get too complex and difficult to administer. The commenter stated that the final rule regarding Preferences for Admission to Assisted Housing was clear, but that additional clarification is needed. HUD understands the concern of this commenter and has tried to simplify the regulation while implementing statutory provisions for admission.

One commenter stated that income limits should be abolished. Another commenter requested that HUD reduce the definitional age for an elderly person from 62 to 55. However, the provisions for admission of low-income families and the age definition for an elderly person are statutory, and therefore HUD cannot change them in this rule. HUD will consider both of these comments as HUD develops its legislative proposal for Indian housing.

2. Initial Determination, Verification, and Reexamination of Family Income and Composition (§ 950.315)

One commenter stated that recertifications should only be done once for elderly. Another commenter stated that recertification of participants should be every three years. However, the United States Housing Act of 1937 states that reviews of family income shall be made at least annually. Amending this provision would require a statutory change.

3. Total Tenant Payment—Rental and Turnkey III Programs (§ 950.325)

Many commenters objected to the 30 percent of monthly adjusted income provision in § 950.325(a)(i) of the proposed rule. Both tribes and IHAs submitted resolutions objecting to this provision. Commenters stated that this provision causes an unreasonable burden on tenants and does not provide an incentive to seek gainful employment. One commenter stated that the rule promotes dependency on the Federal Government for welfare assistance and destroys the initiative for self-sufficiency. Several commenters objected that automatically charging 30 percent, regardless of the quality of the unit, would have a discriminatory effect, in that it perpetuates poverty, is a disincentive for viable employment, and penalizes tribal members who are struggling to achieve economic sufficiency.

Many commenters requested a change in the total tenant payment from 30 percent to 20 percent. Some commenters requested that the percentage be lowered for the elderly only. Another commenter requested that a flat rent be charged or the IHA be allowed to charge minimum rents. Another commenter requested that no rent be charged for welfare families.

One commenter stated that § 950.325(a) should be changed to read as follows: "Total tenant payment shall be the highest of the following, up to the IHA's established ceiling rent (calculated using local income levels, rents, and economic conditions) rounded to the nearest dollar."

Many commenters recommended a change to the current ceiling rent policy. These commenters further stated that IHAs should be allowed to establish ceiling rates using local economic conditions to provide housing for the working poor at reasonable rates. Another commenter requested that ceiling rents be based on fair market rents for the particular reservation or a rent ceiling equal to the administrative fee for Mutual Help housing. The commenter stated that this would not conflict with the United States Housing Act of 1937, as the Mutual Help administrative fee generally represents the average monthly amount of debt service and operating expenses attributed to a dwelling unit.

HUD received many comments on the definitions of adjusted income and annual income. Several commenters stated that rent should be calculated based on net income; deductions should be changed to be comparable to IRS deductions because of the cost of living

increases; medical deductions should apply to everyone and there should be a secondary wage earner deduction; child support payments should be deducted from the person paying; elderly families should have a deduction of \$2,500; only one income should be used when calculating rent; more deductions should be given for child care; deductions should be allowed for child support; an inflation factor should be built into the deductions; no raises in payments if income increases; and deductions should be provided for investments.

HUD understands that the 30 percent rule and the definition of annual and adjusted income are of major concern in the Indian housing rental program. The United States Housing Act of 1937 establishes the amount of payment for rental housing and defines the term "income" and "adjusted income." Therefore, without a statutory change, HUD cannot address any of these requested changes. As indicated in other parts of this preamble, HUD is considering other regulatory changes for the public and Indian housing programs, and is preparing a legislative proposal for the Indian housing program. HUD will consider all of the comments above as it develops the proposal.

4. Rent and Homebuyer Payment Collection Policy (§ 950.335)

A commenter stated that payment and collection policies should comply with ACC, statutory, and regulatory requirements, and not HUD guidelines. HUD agrees with this comment and has revised the language in this section of the final rule.

5. Grievance Procedures and Leases (§ 950.340)

A commenter stated that (a)(iii) of the proposed rule should be struck, or HUD should at least explain that such a party may be an official or employee of the IHA. The reference from the commenter was incorrect, and therefore HUD is unable to determine the nature of the commenter's concerns. HUD would like to note that the language in § 950.340(a)(1) is statutory.

A commenter stated that § 950.340(a)(3)(ii) should be changed. The basic elements of due process should recognize Indian Civil Rights Act (ICRA) exceptions for tribal customs and practices. HUD finds it unnecessary to amend the rule to recognize exceptions from the Indian Civil Rights Act (ICRA) (25 U.S.C. 1301-1303), because the rule currently states in § 950.340(a)(1) that each IHA shall adopt grievance procedures that are appropriate to local

circumstances and that comply with the ICRA, if applicable.

A commenter stated that the phrase "related to the termination" in § 950.340(a) and (b) should be changed to "used" in the termination or eviction. HUD could not locate this phrase in subsection (a). HUD is unable to change the wording in subsection (b)(6) because it is a statutory requirement.

One commenter stated that this section attempts to give HUD the authority to determine whether tribal and state termination or eviction procedures provide the basic elements of due process. The commenter continued that since HUD has no authority over tribal sovereignty rights to determine its own eviction and termination procedures, this section should be removed from the rule. However, HUD's ability to determine the basic elements of due process is statutory, and therefore this section remains unchanged.

A commenter found a typographical error in § 950.340(b)(6) in the proposed rule. The provision should read "Specify that with respect to any notice." HUD has corrected the typographical error in the final rule.

6. Fire Safety (§ 950.346)

A commenter recommended that this section be revised to change references to "hard-wire smoke detectors" to "hard-wire with battery back-up smoke detectors," and that this section should reflect the need for fire extinguishers in each unit. The commenter indicated that many Mutual Help homes have only battery operated smoke detectors, and that many of them are inoperable. The commenter stated that IHAs should be allowed to receive funding to bring such units up to code.

HUD received a second comment regarding the benefits of a residential range top suppression system that is capable of detecting a cooking grease fire originating on the range top, extinguishing the fire, and preventing reignition. The commenter provided sample specifications for the product for inclusion in the rule. The Fire Administration Authorization Act of 1992 (the Act) (Pub. L. 102-522, approved October 26, 1992) established applicable Federal standards for fire safety, and these standards are reflected in this rule. HUD considers it appropriate to reflect the minimum Federal requirements mandated by the Act and does not plan to establish more stringent requirements in this rule. To the extent that the State, tribal, or local jurisdiction in which the units are located has more stringent fire prevention and control standards, the

more stringent State, tribal, or local standards will govern. Further, HUD wishes to point out that funding is available under both the CIAP and CGP programs for fire safety needs. Under the competitive CIAP application process, work items related to fire safety are prioritized for funding along with emergency work items.

E. Subpart E—Mutual Help Homeownership Opportunity Program

1. Scope and Applicability (§ 950.401)

One commenter asked what regulations exist for Mutual Help (MH) units placed under ACC before March 9, 1976. There are no regulations for the MH units placed under ACC prior to March 9, 1976. The document governing that program is the Mutual Help and Occupancy (MHO) Agreement.

2. Special Provisions for Development of an MH Project (§ 950.413)

One commenter stated that paragraph (d) in this section of the proposed rule should be revised since it allows HUD to decide not to proceed with the development of a MH project. The commenter stated that this provision is inconsistent with the goal of the rule—HUD is giving IHAs greater responsibility, yet it is still reserving control and discretion as to how IHAs carry out the housing program. In response to this comment, HUD has removed this entire section. The provisions of § 950.135, Administrative capability, will apply prior to an action that would result in cancellation of a development by HUD, and the IHA would be involved and given every opportunity to respond and appeal if necessary.

3. Selection of MH Homebuyers (§ 950.416)

One commenter requested that the Federal preference mentioned in § 950.416(d) be removed from this section because IHAs should select homebuyers with the ability to meet the obligations of the program, and Federal preference is in conflict with the ability to meet homebuyer obligations. However, as the commenter recognized, the Federal preference is a statutory requirement that HUD is unable to remove at this time. As mentioned previously in this preamble, the Office of Native American Programs is developing a legislative proposal and will consider this comment at that time.

One commenter requested that HUD revise § 950.416(e) on principal residency to emphasize that the determination of whether the home is necessary for the family's livelihood or

for cultural preservation be solely that of the IHA. In response to this comment, HUD has changed the wording on the principal residency as requested.

One commenter asked HUD to streamline this section and handle many of these requirements in a handbook or by Board policy. HUD has reviewed this section and streamlined where possible; however, many of the requirements in this section are statutorily based and therefore HUD cannot change them.

One commenter requested the inclusion of a discretionary preference that the local IHA would apply to handle unique situations in their area. On July 18, 1994 (59 FR 36616), HUD published a final rule in the **Federal Register** on Preferences for Admission to Assisted Housing. That rule specifically authorizes the adoption of local selection preferences by housing authorities in admitting some applicants. This rule permits IHAs to adopt preferences that respond to local housing needs and priorities after conducting public hearings. See §§ 950.301 and 950.303 of this final rule.

4. MH Contribution (§ 950.419)

One commenter suggested that the MH contribution requirement should be at the option of the IHA. Another commenter requested that land cost be determined individually by each tribe through an appraisal with a cap of \$2500. The requirement for a MH contribution of at least \$1500 is statutory, and therefore HUD cannot remove the requirement from the rule. In response to these comments, however, HUD has revised this section to reflect the statutory requirement that the MH contribution be at least \$1500, rather than a maximum of \$1500, to allow for additional MH contributions by the homebuyer.

One commenter requested that a subsequent homebuyer be given credit for land donated by the tribe. HUD has recently provided guidance to the Area ONAPs that clarifies this section of the rule. A subsequent homebuyer can be given credit for a land contribution by a tribe and not be required to provide an additional MH contribution.

5. Inspections, Responsibility for Items Covered by Warranty (§ 950.425)

One commenter recommended that §§ 950.425(a) (1) and (2) be revised to clarify that latent defects would be covered even after the warranty period. In response to this comment, HUD has streamlined this section, and this issue is now covered under the development section (§ 950.270(a)), in which HUD believes the language is clearer.

6. Homebuyer Payments—Post-1976 Projects (§ 950.426)

One commenter requested that the percentage of income used for determining homebuyer payments be changed from 15 percent to 12 percent. Another commenter requested that the percentage for elderly be changed to 10 percent. Another commenter stated that MH should have fixed payments, which would eliminate the need for recertification. The requirement to charge MH participants 15 to 25 percent of income is statutory, and HUD cannot change it through regulation. However, as mentioned above, HUD's Office of Native American Programs will consider these comments when it develops its legislative proposal for Native American Programs.

7. Maintenance, Utilities, and Use of Home (§ 950.428)

HUD received two comments regarding § 950.428(c) on inspections. One commenter requested that HUD eliminate the need for inspections. Another commenter stated that inspections should be based on the amount of equity in a homebuyer's account. In response to these comments, HUD has changed the requirement in the final rule for MH inspections. The language in the final rule states that the IHA shall conduct inspections of each home on a schedule developed by the IHA that ensures that the home is maintained in a decent, safe, and sanitary condition.

One commenter requested that the language in § 950.428(d) of the proposed rule be revised since the correction of warranty items is not the same as providing maintenance, and the two concepts should be distinct. HUD agrees, and in response to this comment HUD has revised this language.

HUD received two comments on § 950.428(g). One commenter stated that an IHA should be able to use Monthly Equity Payments Account (MEPA) funds for improvements without a waiver. Another commenter stated that the IHA, not HUD, should determine how MEPA funds can be used. This rule does not require an IHA to obtain approval or a waiver from HUD in order to allow a homebuyer to use MEPA funds for betterments and additions. The IHA also has the ability to determine whether the homebuyer needs to replenish the MEPA. Therefore, HUD has made no changes.

8. Operating Subsidy (§ 950.434)

One commenter requested a change in the operating subsidy for collection losses so that the IHA could have funds

in advance to repair vacant units because of the lack of reserves. While HUD never intended to provide funds for needed repairs to a vacant unit after the repairs were completed, that was often the case due to the budget process and the need for the IHA to follow through on all collection efforts prior to receiving funds. HUD has modified the language in the final rule and will provide additional guidance on the process to the Area ONAPs so that funds can be provided to the IHA as soon as possible.

Two commenters requested additional subsidy in the MH program. One commenter requested operating subsidy for units converted for self-sufficiency or anti-drug programs. Another requested subsidy to pay for administrative costs involved with using the MEPA for low-income housing purposes. However, HUD finds that the administrative charge in the MH program should be used to cover the minimal costs associated with the programs mentioned above.

One commenter requested that operating subsidy be provided for counseling in the rental program and that all subsidy be provided at 100 percent. HUD provides operating subsidy for the rental program through the Performance Funding System, and the IHA can budget for staff to provide counseling in the rental program if the budget can support this service. HUD recognizes the difficulty that IHAs experience when subsidy is provided at less than 100 percent. However, the amount of subsidy is subject to annual congressional appropriations, and therefore HUD is unable to guarantee funding at 100 percent.

Several commenters requested that HUD take into account logistical concerns and IHA size when developing a formula for counseling and training funds. HUD agrees with the comments and will take these factors into account when developing the plan for providing operating subsidy funding for counseling and training. HUD will consult IHAs prior to implementation.

9. Homebuyer Reserves and Accounts (§ 950.437)

Several commenters stated their support for the change to use MEPA funds for low-income housing purposes. HUD received several other comments on this regulatory change. One commenter suggested that the use of MEPA in § 950.437(b)(2)(ii) should be limited based on home inspections. This commenter stated that if there are maintenance items that need to be addressed, the IHA should not be allowed to use the MEPA. Another

commenter requested that the IHA be able to use MEPA funds for alternative types of housing aimed at middle-income Indian families. Another commenter requested more independence from HUD rules in § 950.437(b), but this commenter provided no additional information. HUD also received comments requesting clarification of the requirements for resident notification, eligible uses, and developing a formula for the percentage that can be used, as well as a request to change the definition of MEPA.

HUD appreciates the comments received on this major regulatory change. HUD developed this section of the proposed rule based on public comment during the Native American consultation process in order to give flexibility to IHAs that wish to use the MEPA. IHAs will be required to obtain approval for use of the MEPA and to maintain a sufficient reserve of equity for homebuyers in need of maintenance. Hopefully, this will address the concerns of the commenters regarding which IHAs will be eligible to use the MEPA for other low-income housing purposes.

With regard to the comment on expanding the use of the MEPA to middle-income families, HUD has determined that the use of MEPA funds must be limited to low-income housing purposes as long as the development is under the Annual Contributions Contract.

HUD plans to address many of the issues such as eligible uses in ONAP guidebooks. In streamlining the regulation, HUD found that it was best to handle policy questions in this way. It is also HUD's goal to give IHAs the ability to make decisions on the amount of MEPA available for use and the amount needed for homebuyer maintenance if they permit homebuyers to use the reserve.

One commenter stated that IHAs should not be required to pay interest on MEPA accounts if the funds are being used for other low-income housing purposes. The commenter requested clarification on how the IHA would earn or pay interest to homebuyers. The current Mutual Help and Occupancy Agreement between the IHA and the homebuyer states that interest on equity accounts will be provided annually. Due to this provision, HUD has not changed the regulation as requested.

One commenter requested that the first \$5,000 of MH equity be used as a nonrefundable downpayment. HUD believes that a requirement for a downpayment other than the \$1,500 MH

contribution would violate the intent of the United States Housing Act of 1937.

One commenter requested that HUD retain the Voluntary Equity Payment Account (VEPA). However, HUD removed the requirement for the VEPA to streamline the MH program. IHAs had indicated that the account was seldom used. If an IHA wants to continue to use a voluntary account, they have the ability to do so. However, without a VEPA, a homebuyer could continue to make additional monthly payments that would be deposited in the Monthly Equity Payment Account and be used to pay off a home in a shorter period of time, similar to the current VEPA.

10. Purchase of Home (§ 950.440).

Several commenters indicated that they supported the change that allows the IHA to establish the purchase price schedule. One commenter requested national uniformity based on development cost. Another commenter requested clarification on whether the new regulations regarding purchase price would apply to existing homes. In response to the comments received, HUD will implement the provisions of § 950.440(b) of the proposed rule, which provides for the IHA to set the purchase price for initial and subsequent homebuyers, in the final rule. In response to whether the rule is retroactive, the IHA can implement the changes in the final rule for current homebuyers with their consent. The current MHO Agreement may differ on several topics. Since this is the contract between the homebuyer and the IHA, homebuyer consent would be required.

HUD received several other comments regarding § 950.440. One commenter requested that an IHA be allowed to convey a unit and still perform modernization after that unit is conveyed, if prior to conveyance that unit was on a comprehensive improvement assistance program (CIAP) or 5 year Comp Grant comprehensive plan. Another commenter requested that IHAs be allowed to perform only emergency work on a paid-off unit if there was a repayment plan for the delinquency. Another commenter stated that they agree with the changes, but they are concerned about the operating cost once the unit is paid off.

In response to these comments, HUD's Office of General Counsel (OGC) was asked to review the issue once more. OGC stated that they believe that the statute can be read to allow modernization work to be done on units, title to which have been conveyed, but which were approved for modernization funding prior to

conveyance. However, once conveyed, the unit is not eligible for future assistance. The language in the regulations at 950.440 and 950.602 will be revised accordingly. In response to the comment that IHAs be allowed to perform only emergency work on a paid-off unit if there is a repayment plan for a delinquency, HUD believes that modernization may be required, either by statute or regulation, for these units, and therefore HUD has not changed the language in the rule. However, the IHA does have the ability to determine its priorities with respect to modernization work for all units and could limit the work to emergency items. In response to the comment regarding operating costs, until a unit is conveyed, the homebuyer is responsible for monthly payments in accordance with the Mutual Help and Occupancy Agreement. Therefore, the administration charge should still be collected to cover operating costs until the unit is conveyed.

One commenter requested that zero interest be applied to rental, Turnkey III, and Old Mutual Help. HUD issued guidance in Notice PIH 91-29, dated June 18, 1991, which provides for zero interest in the Old Mutual Help Program. HUD has also modified the Turnkey III rule at § 950.525 to provide for zero interest. It is not necessary to change the interest in the rental program, since all debt relating to the rental program has been forgiven through the loan forgiveness legislation, and since tenants are not charged interest with their housing payments.

One commenter requested that § 940.440(e)(6) be changed to allow an IHA to use proceeds from the sale for middle-income families. Recently, HUD's Office of General Counsel stated that there are no statutory restrictions that would prohibit the amendment of an Administrative Use Agreement to allow proceeds from the sale of homeownership units to be used for other housing purposes, including purposes other than for lower income housing. However, any proceeds of sale must still be used in connection with low- and very low-income persons. Therefore, HUD has not changed the language in the rule.

11. Termination of MHO Agreement (§ 950.446)

One commenter stated that § 950.446(f)(3) suggests that the IHA is the entity that evicts. This commenter recommended that this section should instead indicate that the IHA initiates an eviction action. HUD agrees with this comment and has made the change.

12. Succession (§ 950.449)

One commenter stated that this is perhaps the most important and significant change to the Indian Housing regulations. Another commenter supported this change and stated it was in agreement with the IHA. Another commenter stated that "at the very least, there should be a provision that provides that the designation of a successor by the homebuyer must be approved by tribal government." Although HUD supports tribal involvement in the program, HUD believes that the homebuyer should determine the successor to their unit whenever possible, subject to any restrictions by the tribe on succession to the land.

13. Conversion (§§ 950.445 and 950.458)

HUD received several comments on the conversion process. One commenter requested that the requirement for an actual development cost certificate (ADCC) be eliminated, since this is a lengthy process and holds up conversions. Another commenter requested that HUD eliminate the requirement that a conversion application be in a form required by HUD. Another commenter requested that the MH contribution not be required in a conversion and that the lease process should not hold up a conversion. There was a general comment that HUD does not allow conversion.

In response to these comments, HUD has eliminated the need for an ADCC prior to conversion and the requirement that the conversion package be in a form required by HUD. HUD has not changed the requirement for a MH contribution, since it is a statutory requirement for every MH unit. However, the contribution can be in the form of land. HUD encourages the use of the conversion process whenever it is beneficial for an IHA. If an IHA is having difficulty with the conversion process, it should contact the Office of Native American Programs in Washington, D.C., at the address specified in the "For Further Information Contact" section, above.

F. Subpart F—Self-Help Development in the Mutual Help Homeownership Opportunity Program

HUD received no comments on this subpart. However, HUD has made additional revisions in the final rule to streamline this program.

G. Subpart G—Turnkey III Program

HUD only received one comment on the Turnkey III subpart of the rule. This commenter requested that a zero interest

rate apply to this program, as it does with Mutual Help Homeownership Opportunity Program. HUD had made this change in the proposed rule at § 950.525, and this change is included in this final rule.

Due to the fact that there are currently only 18 IHAs managing the Turnkey III Program, and in response to general public support for additional streamlining of the entire regulation, HUD has attempted to further reduce the regulatory requirements of this program.

H. Subpart H—Lead-Based Paint Poisoning Prevention

With this final rule, HUD makes no changes to the existing regulations for lead-based paint poisoning prevention, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in this rule in an effort to consolidate all the Indian housing regulations.

I. Subpart I—Modernization

1. Comprehensive Improvement Assistance Program and Comprehensive Grant Program

HUD received many comments regarding the changes proposed for the Comprehensive Improvement Assistance Program (CIAP) and Comprehensive Grant Program (CGP). The comments were overwhelmingly supportive of HUD's efforts to simplify the programs. Many of the changes requested on CGP were implemented in the Public and Indian Housing Amendments to the CGP final rule, which was published in the **Federal Register** on August 30, 1994 (59 FR 44810).

One commenter indicated that CIAP should be an entitlement based on age and number of units, and that the formula must take into account small IHAs. However, the United States Housing Act of 1937 specifically provides for two different modernization programs based on housing authority size: a formula funded program for those with 250 or more units, and a discretionary application program for those with fewer than 250 units. Therefore, HUD could not implement this recommendation without a legislative amendment.

Another commenter recommended that CIAP have a five-year plan, like CGP. However, as stated above, funding of a CIAP is made through a competitive application process that does not allow forecasting funding availability for future years, as does the CGP. Although HUD encourages IHAs to plan for

modernization needs, a five-year plan would not serve the same purpose as in the CGP.

One commenter indicated that CIAP funds for IHAs should be a separate set-aside from Public Housing. Currently, there is only one appropriation for Public and Indian Housing. Therefore, implementing this recommendation would require a legislative change.

A commenter suggested that the process of moving CIAP/CGP funds to resident organizations should be in regulations. However, HUD finds that regulating a process for transferring funds to resident organizations would decrease local flexibility, and therefore HUD has not implemented this recommendation.

2. Special requirements for Turnkey III and Mutual Help developments (§ 950.602)

Many commenters made recommendations regarding this section of Subpart I and a cross reference in the Mutual Help Homeownership Opportunity Program, Subpart E, § 950.440. Both references discuss the use of modernization funds for paid-off and conveyed units. In the final CGP rule (published in the **Federal Register** on August 30, 1994 (59 FR 44810)), HUD removed the regulatory prohibition against modernizing Mutual Help units that are paid off but not conveyed. The preamble to that rule stated:

The Department believes that the only regulatory restrictions on the modernization of paid-off Mutual Help units should be that: title has not been conveyed to the homebuyer; where the homebuyer has a delinquency at the end of the amortization period, non-emergency modernization work shall not be done until all delinquencies are repaid; and, the units shall be identified in the Comprehensive Plan (including the Physical Needs Assessments and Five-Year Action Plan). The prohibition against performing modernization work on conveyed units is based on a determination by the Department's Office of General Counsel that statutory authority for the expenditure of modernization funds is limited to existing public housing units. Once title is conveyed and the unit is no longer covered by the ACC, the unit is no longer a public housing unit and there is no legal authority for the expenditure of modernization funds provided under section 14 of the Act. IHAs that wish to modernize conveyed Mutual Help units must obtain funding from another source; e.g., proceeds from the sale of homeownership units or Bureau of Indian Affairs Housing Improvement Program funds. (59 FR 44811).

A group of IHAs consolidated their comments and offered two alternative recommendations for this rule's provisions on conveyed units at

§§ 950.602 and 950.440. They recommended that IHAs be allowed to convey a unit and still perform modernization after the unit is conveyed, if prior to conveyance the work was in an approved CIAP application or CGP Five-Year Plan, and the work is done within five years. Alternatively, they recommended that IHAs have the option to delay conveyance for up to five years to conduct modernization, but only with the written consent of the homebuyer.

Another IHA commented that conveyed units should be eligible for modernization work. The IHA argued that first priority should go to homebuyers who have shown good faith by paying for their homes and now have the deeds to the homes, and not to those who, because of a delinquent status, have not received their conveyance documents. The IHA recommended that in the renovation of paid-off units, IHAs should have the discretion to decide which units to modernize, whether the unit has been conveyed or not.

Two IHAs recommended that HUD allow old Mutual Help and Turnkey III units that have been conveyed to be brought back into the programs for the purpose of comprehensive modernization. The IHAs considered the proposed change to be unfair to homebuyers in paid-off units that were not included in the Comprehensive Plans because paid-off units were ineligible under the original regulation. Many of those units were conveyed before the proposed rule was published, which provided that units that are paid off but not conveyed are eligible for modernization. The IHAs argued that the conveyed units deserve the same consideration and have the same physical improvement needs, such as handicapped accessibility, lead-based paint testing, and meeting current codes.

As discussed in the preamble language for Subpart E, the Office of General Counsel (OGC) has advised that the statute can be read to allow modernization work to be done on units, title to which have been conveyed, but which were approved for modernization funding prior to conveyance. Therefore, HUD has revised the rule in response to the comments submitted on this issue. Although title can be conveyed once the unit has been approved for modernization funding, OGC recommends that IHAs delay conveyance until modernization work is completed on a Mutual Help unit.

In response to the comments requesting that modernization be eligible for a Mutual Help unit that has been conveyed but not approved for

modernization funding prior to conveyance, the prohibition is based on the determination that statutory authority for the expenditure of funds is limited to existing public housing units. Once title is conveyed and the unit is no longer owned by an IHA and covered by the ACC, the unit is no longer a public housing unit, and there is no legal authority for the expenditure of modernization funds provided under section 14 of the United States Housing Act of 1937.

Two commenters recommended that when units become paid off, the operating costs should be charged to the Comprehensive Grant Program. Another commenter recommended that the rule be revised to specify clearly that during the period after a unit becomes paid off, until it is modernized and title is conveyed, the homebuyer is responsible for the administration charge. In response to the first two comments, the United States Housing Act of 1937 requires that the homebuyer make monthly payments of at least an administration charge to cover monthly operating expenses on the dwelling. The second commenter was correct in the statement that the administration charge shall be made by a homebuyer until conveyance. HUD has included language to clarify this requirement in § 950.440 of the rule.

3. Contracting Requirements (CIAP) (§ 950.642) and Conduct of Modernization Activities (CGP) (§ 950.681)

One commenter stated that in order to assist new contractors in getting established an IHA should be allowed to give preference to new contractors and pay their licensing and bonding fees. A change to the contracting requirements would conflict with 24 CFR part 85, which contains the government-wide administrative requirements for grants. Paying licensing and bonding fees would give an unfair advantage to new contractors and would not provide fair and open competition as required by Part 85.

4. Eligible Costs (§ 950.666)

One commenter agreed with the increase from 10 percent to 20 percent in the cost limitation on management improvements in § 950.666(m)(2), but indicated that the cost limitation on administrative costs should also be increased from 7 percent to 10 percent. HUD appreciates the comment in support of the change in the cost limitation for management improvement. The cost limitation on administrative costs was increased from 7 percent to 10 percent of the annual

grant in the CGP final rule published in the **Federal Register** on August 30, 1994 (59 FR 44810), and effective September 29, 1994. That change is also reflected in this rule.

One commenter stated that the proposed rule is too restrictive with respect to room additions needed for handicapped accessibility. Three commenters recommended that the rule include additions to the living space in a dwelling unit as an eligible work item under CGP and CIAP. HUD implemented this recommendation for the CGP final rule cited above at § 905.666(c). That rule provides that "[a]dditional dwelling space may be added to existing units." A similar change has been made in this CIAP final rule at § 950.615(b).

5. Allocation of Assistance (§ 950.669)

A regional association of IHAs commended the proposed rule for allowing IHAs to hold public hearings earlier in the year using the prior year's formula amount for planning purposes. HUD appreciates the comment in support of this change.

6. Comprehensive Plan (Including Five-Year Action Plan) (§ 950.672).

One commenter anticipated a problem with unrealistically raising expectations by consulting with the residents on all five years of the Comprehensive Plan. The commenter recommended limiting resident participation to years when funds are available. However, section 14 of the United States Housing Act of 1937 requires that residents affected by the planned activities be given the opportunity to review and provide their input. This rule (§ 950.672(b)(5)) requires that at the annual Public Hearing the IHA present "information on the Comprehensive Plan/Annual Submission and the status of prior approved programs."

7. HUD Review and Approval of Comprehensive Plan (Including Five-Year Action Plan) (§ 950.675).

One commenter wanted to be able to maintain flexibility to move work items between years of the CGP Action Plan and have the ability to switch line items within the original scope of work. HUD has included the ability to undertake any of the work identified in any of the other four years of the latest approved Five-Year Action Plan, current Annual Statement, or previously approved CIAP budgets in § 950.675(c) of the CGP final rule cited above.

J. Subpart J—Operating Subsidy

1. General Comments.

One commenter requested that the calculation for the PFS be changed because it is too complicated. Another commenter stated that the PFS should be designed specifically for IHAs. This commenter suggested that HUD should initiate a national study on PFS and how to redesign it. HUD recognizes the concerns regarding the PFS and how it relates to the Indian Housing program. However, any change in the PFS would require statutory and/or regulatory changes. At this time, HUD is studying the entire Indian Housing program. In this process, HUD will address any recommendation for change in this area.

Another commenter stated that IHAs should be provided with additional subsidy to cover the costs of implementing part 85. However, the PFS is designed to cover administrative costs of a well-managed IHA. In the Mutual Help program, the administration charge is used to cover an IHA's administrative expenses. There are no additional congressional appropriations to cover these costs, and therefore HUD cannot change the rule to accommodate this request.

2. Other Costs (§ 950.720).

A commenter stated that additional operating subsidy should be provided for user fees for the Mutual Help program. Section 122(c) of the Housing and Community Development Act of 1992 amended Section 203 of the Indian Housing Act of 1988 (Pub. L. 100-358, approved June 29, 1988) to provide user fees to municipalities specifically for each rental housing unit. The amendment did not include Mutual Help, and a legislative change would be necessary to provide this funding.

3. Operating Reserves (§ 950.740)

One commenter requested that HUD maintain the requirement for a maximum operating reserve in the rental program. However, HUD is making efforts to streamline regulations and give control of project operations to IHAs. This includes the determination by an IHA of the amount of reserves needed for efficient program operation. For that reason, HUD has eliminated the requirement for the maximum operating reserve in both the rental and Turnkey III programs.

4. Operating Budget Submission and Approval (§ 950.745)

A commenter recommended that HUD revise the Handbook early in Fiscal Year (FY) 1995 to implement the budget submission change. On October 4, 1994,

HUD issued HUD Notice 94-72, which implemented the revised procedures regarding operating budget submission. HUD has also modified this rule slightly to reflect the budget submission changes.

K. Subpart K—Energy Audits, Energy Conservation Measures, and Utility Allowances General Changes

1. General Comment

HUD received a comment suggesting that this entire section should be simplified, and it should reflect less HUD reviews and approvals. In response to this comment, HUD has reviewed the section and streamlined when possible. HUD has also removed many of the reviews and approvals mentioned by the commenter.

2. Energy Performance Contracts (§ 950.825)

One commenter requested that the word "shall" in the following sentence of § 950.825(a) be removed: "Energy performance contracting shall be conducted using one of the following methods of procurement * * *." However, removal of the word "shall" would eliminate the need to conduct energy audits. HUD finds that its policies in this section support national energy conservation goals, and the elimination of the audits would not meet HUD's goals of reducing energy consumption or operating costs.

L. Subpart L—Operation of Projects After Expiration of Initial ACC Term

With this final rule, HUD makes no changes to the existing regulations for the operation of projects after the expiration of the initial ACC term, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in this rule in an effort to consolidate all the Indian housing regulations.

M. Subpart M—Disposition or Demolition of Projects

HUD received no comments on this subpart. HUD had taken steps to streamline this subpart in the proposed rule, and has made no additional changes in this final rule.

N. Subpart N—Miscellaneous

Subpart N was incorporated into subpart J (§ 950.772) of the final rule.

O. Subpart O—Resident Participation and Opportunities General Provisions

A final rule for the Public and Indian Housing Amendment to the Tenant Participation and Tenant Opportunities in Public and Indian Housing was published in the **Federal Register** on

August 24, 1994 (59 FR 43622). With today's final rule, HUD makes no changes to the Resident Participation and Opportunities regulations, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in today's rule in an effort to consolidate all the Indian housing regulations.

P. Subpart P—Section 5(h) Homeownership Program

A final rule for the Section 5(h) Homeownership Program for Public and Indian Housing was published in the **Federal Register** on November 10, 1994 (59 FR 56354). With today's final rule, HUD makes no changes to the Section 5(h) Homeownership regulations for Indian housing, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in today's rule in an effort to consolidate all the Indian housing regulations.

Q. Subpart R—Family Self-Sufficiency

HUD received no comments on this subpart. As stated in the proposed rule, HUD made very few changes to the regulation implementing the FSS program because the current regulation reflects the statutory provisions of section 23 of the United States Housing Act of 1937. HUD has revised the final rule to eliminate definitions that are included in § 950.102.

IV. Other Matters*Finding of No Significant Impact*

At the time of the development of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact remains applicable to this final rule and 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, S.W., Washington, D.C. 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule makes a number of amendments to the Indian Housing Consolidated Program regulations to simplify program

processes, reduce the number of regulatory requirements, and to provide more flexibility to local tribal and Indian housing authority officials in the administration of the Indian Housing program.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as sequence number 1894 in HUD's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57638) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

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 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Homeownership, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Disability,

Homeownership, Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

Accordingly, and under the authority of 42 U.S.C. 3535(d), title 24 of the Code of Federal Regulations is amended as follows:

PART 905—[REMOVED AND RESERVED]

1. Part 905 is removed and reserved.
2. Part 950 is added to read as follows:

PART 950—INDIAN HOUSING PROGRAMS

Subpart A—General

Sec.

- 950.101 Applicability and scope.
- 950.102 definitions.
- 950.110 Assistance from Indian Health Service and Bureau of Indian Affairs.
- 950.115 Applicability of civil rights requirements.
- 950.117 Displacement, relocation, and acquisition.
- 950.120 Compliance with other Federal requirements.
- 950.125 Establishment of IHAs pursuant to State law.
- 950.126 Establishment of IHAs by tribal ordinance.
- 950.130 IHA Commissioners who are tenants or homebuyers.
- 950.135 Administrative capability.

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- 950.160 Procurement standards.
- 950.165 Methods of procurement.
- 950.170 Other requirements applicable to development contracts.
- 950.172 Wage rates.
- 950.175 Indian preference requirements.
- 950.190 Insurance.
- 950.195 Lead-based paint liability insurance coverage.

Subpart C—Development

- 950.200 Roles and responsibilities of Federal agencies.
- 950.205 Allocation.
- 950.207 Eligibility.
- 950.210 Authority for proceeding without HUD approval.
- 950.215 Production methods.
- 950.220 Total development cost.
- 950.225 Application.
- 950.227 Initial development grant approval and ACC execution.
- 950.229 Expenditure of funds.
- 950.231 Project coordination.
- 950.235 Site selection criteria.
- 950.240 Types of interest in land.
- 950.245 Appraisals.
- 950.247 Environment.
- 950.250 Site approval.
- 950.255 Design criteria.
- 950.260 Construction stage development cost budget and certifications.
- 950.265 Construction and inspections.
- 950.270 Construction completion and settlement.

- 950.275 Warranty inspections and enforcement.
- 950.280 Correcting deficiencies.
- 950.285 Fiscal closeout.

Subpart D—Operation

- 950.301 Admission policies.
- 950.303 Selection preferences.
- 950.304 Federal preferences: general.
- 950.305 Federal preferences: involuntary displacement.
- 950.306 Federal preference: substandard housing.
- 950.307 Federal preference: rent burden.
- 950.308 Exemption from eligibility requirements for police officers and other security personnel.
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- 950.315 Initial determination, verification, and reexamination of family income and composition.
- 950.320 Determination of rents and homebuyer payments.
- 950.325 Total tenant payment—Rental and Turnkey III programs.
- 950.335 Rent and homebuyer payment collection policy.
- 950.340 Grievance procedures and leases.
- 950.345 Maintenance and improvements.
- 950.346 Fire safety.
- 950.360 IHA employment practices.

Subpart E—Mutual Help Homeownership Opportunity Program

- 950.401 Scope and applicability.
- 950.416 Selection of MH homebuyers.
- 950.419 MH contribution.
- 950.422 Commencement of occupancy.
- 950.425 Inspections, responsibility for items covered by warranty.
- 950.426 Homebuyer payments before March 9, 1976.
- 950.427 Homebuyer payments for projects under ACC on or after March 9, 1976.
- 950.428 Maintenance, utilities, and use of home.
- 950.431 Operating reserve.
- 950.432 Operating budget submission and approval.
- 950.434 Operating subsidy.
- 950.437 Homebuyer reserves and accounts.
- 950.440 Purchase of home.
- 950.443 IHA homeownership financing.
- 950.446 Termination of MHO Agreement.
- 950.449 Succession.
- 950.452 Miscellaneous.
- 950.453 Counseling of homebuyers.
- 950.455 Conversion of rental projects.
- 950.458 Conversion of Mutual Help projects to rental program.

Subpart F—Self-Help Development in the Mutual Help Homeownership Opportunity Program

- 950.470 Purpose and applicability.
- 950.475 Basic requirements.
- 950.480 Self-Help agreement.
- 950.485 Application.
- 950.490 Development program.
- 950.495 Default of Self-Help agreement.

Subpart G—Turnkey III Program

- 950.501 Introduction.
- 950.503 Conversion of Turnkey III developments.

- 950.505 Eligibility and selection of Turnkey III homebuyers.
- 950.507 Homebuyer Ownership Opportunity Agreements (HOOA).
- 950.509 Responsibilities of homebuyer.
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- 950.601 Allocation of funds under section 14.
- 950.602 Special requirements for Turnkey III and Mutual Help developments.
- 950.603 Modernization and energy conservation standards.
- Comprehensive Improvement Assistance Program (For IHAs That Own or Operate Fewer than 250 Indian Housing Units)**
- 950.609 Purpose.
- 950.615 Eligible costs.
- 950.618 Procedures for obtaining approval of a modernization program.
- 950.624 Resident and homebuyer participation.
- 950.635 Initiation of modernization activities.
- 950.639 Fund requisitions.
- 950.642 Contracting requirements.
- 950.645 On-site inspections.
- 950.648 Budget revisions.
- 950.651 Progress reports.
- 950.654 HUD review of IHA performance.
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- 950.772 Financial management systems, monitoring and reporting.
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- Subpart K—Energy Audits, Energy Conservation Measures, and Utility Allowances**
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- Energy Audits and Energy Conservation Measures**
- 950.805 Requirements for energy audits.
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- 950.812 Funding.
- 950.815 Energy conservation equipment and practices.
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- Individual Metering of Utilities**
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- 950.901 Purpose and applicability.
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- 950.933 Use of proceeds.
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- Subpart N—[Reserved]**
- Subpart O—Resident Participation and Opportunities General Provisions**
- 950.960 Purpose.
- 950.961 Applicability and scope.
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- 950.963 HUD's role in activities under this subpart.
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Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa-1437ee and 3535(d).

Subpart A—General

§ 950.101 Applicability and scope.

(a) *General.* (1) Under title II of the United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (42 U.S.C. 1437aa, et seq.), the Department of Housing and Urban Development (HUD) provides financial and technical assistance to Indian Housing Authorities (IHAs), for the development and operation of low-income housing projects in Indian areas. This part is applicable to such projects developed or operated by an IHA in an Indian area, as defined in § 950.102.

(2) If assistance under this part is not available to a low-income family because the family desires housing in an area within which no IHA is authorized to provide housing, or if for any other reason a family desires housing assistance other than under this part, a family may seek housing assistance under other HUD programs. (See 24 CFR part 203, chapter VIII of this title, as

well as the remainder of chapter IX of this title.)

(b) *Other HUD regulations and requirements.* The provisions of this part are a complete statement of HUD regulations affecting the development and operation of low-income housing by IHAs except as supplemented by parts in other chapters of this title that are referenced in this part.

§ 950.102 Definitions.

Act. The United States Housing Act of 1937 (42 U.S.C. 1437-1440).

Action plan. A plan of the actions to be funded by an IHA over a period of five years (including an IHA's proposed allocation of its modernization funds to a reserve established under § 950.666(a)(3)) to make the necessary physical and management improvements identified in the IHA's comprehensive plan under subpart I of this part. The plan shall be based upon HUD's and the IHA's best estimates of the funding reasonably expected to become available over the next five-year period. The action plan is updated annually to reflect a rolling five-year base.

Adjusted income. Annual income less the following allowances, determined in accordance with HUD instructions:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family;
- (3) For any family that is not an elderly family but has a handicapped or disabled member other than the head of household or spouse, handicapped assistance expenses in excess of three percent of annual income, but this allowance may not exceed the employment income received by family members who are 18 years of age or older as a result of the assistance to the handicapped or disabled person;
- (4) For any elderly family—
 - (i) That has no handicapped assistance expenses (as defined in paragraph 3 of this definition), an allowance for medical expenses (as defined in this section) equal to the amount by which the medical expenses exceed three percent of annual income;
 - (ii) That has handicapped assistance expenses greater than or equal to three percent of annual income, an allowance for handicapped assistance expenses computed in accordance with paragraph (3) of this definition, plus an allowance for medical expenses that is equal to the family's medical expenses; and
 - (iii) That has handicapped assistance expenses that are less than three percent of annual income, an allowance for combined handicapped assistance expenses and medical expenses that is equal to the amount by which the sum

of these expenses exceeds three percent of annual income;

(5) Child care expenses, as defined in this section; and

(6) Excessive travel expenses, not to exceed \$25 per family per week, for employment- or education-related travel.

Administration charge. In Mutual Help projects, the amount budgeted per-unit per-month for operating expense, exclusive of the cost of HUD-approved expenditures for which operating subsidy is being provided in accordance with § 950.434 (see § 950.427(b)).

Allowable expense level. In rental projects, the per-unit per-month dollar amount of expenses (excluding utilities and expenses allowed under § 950.720) computed in accordance with § 950.710, which is used to compute the amount of operating subsidy.

Allowable utilities consumption level (AUCL). In rental projects, the amount of utilities expected to be consumed per-unit per-month by the IHA during the requested budget year, which is equal to the average amount consumed per-unit per-month during the rolling base period.

Annual contributions contract (ACC). A contract under the Act between HUD and the IHA containing the terms and conditions under which HUD assists the IHA in providing decent, safe, and sanitary housing for low-income families. The ACC shall be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization, and/or operation of a low-income housing project under the Act, and the IHA agrees to develop, modernize, and operate the project in compliance with all provisions of the ACC and the Act, and all HUD regulations and implementing requirements and procedures.

Annual income. Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets, for the 12-month period following the effective date of the initial determination or reexamination of income, exclusive of certain types of income as provided in paragraph (2) of this definition.

(1) Annual income includes, but is not limited to:

(i) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(ii) The net income from operation of a business or profession. Expenditures

for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(iii) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (1)(ii) of this definition. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate as determined by HUD;

(iv) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability, or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment (but see paragraph (2)(xii) of this definition);

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (but see paragraph (2)(iii) of this definition);

(vi) *Welfare assistance*. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could, in fact, allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (1)(vi)(B) of this definition shall be the

amount resulting from one application of the percentage;

(vii) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; and

(viii) All regular pay, special pay, and allowances of a member of the Armed Forces (but see paragraph (2)(vii) of this definition).

(2) Annual income does not include the following:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payments received for the care of foster children;

(iii) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (but see paragraph (1)(v) of this definition);

(iv) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(v) Income of a live-in aide;

(vi) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran that is made available for subsistence is to be included in income;

(vii) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(viii) (A) Amounts received under training programs funded by HUD;

(B) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan for Achieving Self-Support (PASS);

(C) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and that are made solely to allow participation in a specific program; or

(D) A resident stipend, but only if the resident stipend does not exceed \$200 per month per officer to resident organization officers. Stipends are intended to cover costs related to

officers' volunteer efforts and include but are not limited to the following items: child care, transportation, special equipment, and special clothing.

(ix) Temporary, nonrecurring, or sporadic income (including gifts);

(x) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(xi) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), or any comparable Federal, State, tribal, or local law during the exclusion period. For purposes of paragraph (2)(xi) of this definition, the following definitions apply:

(A) Comparable Federal, State, tribal, or local law means a program providing employment training and supportive services that—

(1) Is authorized by Federal, State, tribal, or local law;

(2) Is funded by Federal, State, tribal, or local government;

(3) Is operated or administered by a public agency; and

(4) Has as its objective to assist participants in acquiring job skills.

(B) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the United States Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(C) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(xii) Any amounts that would be eligible for exclusion under section 1613(a)(7) of the Social Security Act (deferred periodic payments received in a lump sum from SSI and social security); or

(xiii) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice is published from time to time in the **Federal Register** and distributed to IHAs identifying the benefits that

qualify for this exclusion. Updates will be published and distributed when necessary.

(3) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized subject to a redetermination at the end of the shorter period.

(4) Any family receiving the reparation payments referred to in paragraph (2)(x) of this definition that has been requested to repay assistance under this part as a result of receipt of such payments shall not be required to make further repayments on or after April 23, 1993.

Annual Statement. A work statement covering the first year of the Five-Year Action Plan and setting forth the major work categories and costs by development or IHA-wide for the current Federal Fiscal Year (FFY) grant, as well as a summary of costs by development account and implementation schedules for obligation and expenditure of the funds.

Annual Submission. 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.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

Area Office of Native American Programs (ONAP). The HUD Offices in Chicago (Eastern/Woodlands), Oklahoma City (Southern Plains), Denver (Northern Plains), Phoenix (Southwest), Seattle (Northwest), and Anchorage (Alaska), which have been delegated authority to administer programs under the United States Housing Act of 1937 for the areas in which the IHAs are located.

Base year. The IHA's fiscal year immediately preceding its first fiscal year under the performance funding system (PFS).

Base year expense level. The expense level (excluding utilities, audits, and certain other items) for the year, computed as provided in § 950.710(a).

Benefit/cost analysis. For purposes of subpart K of this part, a direct comparison of the present worth of any savings generated by a given system during the expected useful life of the system or the estimated remaining life of the project, whichever is the shortest

number of years, to the cost of the change.

BIA. The Bureau of Indian Affairs in the Department of the Interior.

Checkmeter. A device for measuring utility consumption of each individual dwelling unit where the utility service is supplied through a mastermeter system. The IHA pays the utility supplier on the basis of the mastermeter readings and uses the checkmeters to determine whether and to what extent utility consumption of each dwelling unit is in excess of the allowance for IHA-furnished utilities, established in accordance with subpart K of this part.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, that are readily accessible to children under seven years of age, such as protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Chief executive officer (CEO). The CEO of a unit of general local government means the elected official or the legally designated official who has the primary responsibility for the conduct of that entity's governmental affairs.

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to be gainfully employed or to further his or her education only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.

Citizen. A citizen or national of the United States.

Common property. The nondwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, that are contained in the development. It also may include common property as defined in a cooperative form of ownership, as determined by the IHA.

Comprehensive grant number. A grant number that is unique to each work statement (under subpart I of this part) covering the improvements to one or more existing Indian housing projects.

Comprehensive Plan. A plan prepared by an IHA, and approved by HUD, under the Comprehensive Grant

Program setting forth all of the physical and management improvement needs of the IHA and its Indian housing developments, indicating the relative urgency of needs, and including the IHA's action plan, cost estimates, and required local government and IHA certifications. The Comprehensive Plan may be revised, as necessary, but shall be revised at least every sixth year. (See subpart I of this part.)

Cooperation agreement. An agreement between an IHA and a local governing (taxing) body that assures exemption from real and personal property taxes and provides for payments in lieu of taxes by the IHA, and that provides for cooperation with respect to the development and operation of low-income housing owned by the IHA.

Current budget year. The IHA fiscal year in which the IHA is operating.

Defective lead-based paint surface. Paint on applicable surfaces having a lead content of greater than or equal to 1 mg/cm², that is cracking, scaling, chipping, peeling, or loose.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Demolition. The razing in whole, or in part, of one or more permanent buildings of an Indian housing project.

Dependent. A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age, or is a disabled person or handicapped person, or is a full-time student.

Deprogramming. Removal from the IHA's inventory under the ACC, pursuant to the IHA's formal request and HUD's approval, of a dwelling unit no longer used for dwelling purposes or a nondwelling structure or a unit used for nondwelling purposes that the IHA has determined will no longer be used for IHA purposes.

Development. Any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-income housing project.

Development grant. The grant that provides IHAs, in response to an application for housing, funds to enable the IHA to plan and construct either rental or mutual help housing. The development grant is for a fixed amount of funding and ends when the housing development is through the warranty period (normally six years from initial development grant approval).

Disabled person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities

Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

Displaced person. A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under Federal disaster relief laws.

Disposition. The conveyance or other transfer by the IHA, by sale or other transaction, of any interest in the real estate of an Indian housing project, excluding transfers of property described in § 950.921(b)(1)(i) through (vii).

Earned home payments account (EHPA). In the Turnkey III program (subpart G of this part), this account is established and maintained pursuant to § 950.517 by the IHA based on a portion of the homebuyer's required monthly payment. The EHPA should equal the IHA's estimate of the monthly cost for routine maintenance of the home.

Elderly family. A family whose head or spouse (or sole member) is an elderly, disabled, or handicapped person, as defined in this section. It may include two or more elderly, disabled, or handicapped persons living together, or one or more of these persons living with one or more live-in aides, as defined in this section.

Elderly person. A person who is at least 62 years of age.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

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

Emergency work. Physical work items of an emergency nature, posing an immediate threat to the health or safety of residents, which shall be completed within one year of funding. Under the Comprehensive Grant program, management improvements are not eligible as emergency work, and therefore shall be covered by the Comprehensive Plan (including the action plan), before the IHA may carry them out. (See subpart I of this part.)

Energy audit. A process carried out in accordance with subpart K of this part, that identifies and specifies the energy and cost savings that are estimated to result from installing or accomplishing an energy conservation measure.

Energy conservation measures (ECMs). Physical improvements or modifications that, if undertaken for a building or facility, or its equipment, are likely to reduce the cost of energy in an amount sufficient to recover the installation costs in a period no longer than the useful life of the measure. (See subpart K of this part.)

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status (see § 950.310(e)).

Family. Family includes but is not limited to:

- (1) An elderly family or single person as defined in this part;
- (2) The remaining member of a tenant family; and
- (3) A displaced person.

Family project. Any project assisted under section 9 of the Act (42 U.S.C. 1437g) that is not an elderly project. For this purpose, an elderly project is one that was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the IHA gives preference in tenant selection (with HUD approval) for all units in the project to elderly families. A building within a mixed-use project that meets these qualifications shall, for purposes of this definition, be excluded from any family project, as shall zero bedroom units.

Federally recognized tribe. Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation or village as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

FFY. Federal Fiscal Year (starting with October 1, and ending with September 30, and designated by the calendar year in which it ends).

Force account labor. Labor directly employed by the IHA on either a permanent or a temporary basis.

Formula. The formula prescribed by HUD to be used in the Performance Funding System to estimate the cost of operating an average unit in an IHA's inventory. (See subpart J of this part.)

Formula expense level. The per-unit per-month dollar amount of expenses (excluding utilities and audits) computed under the formula, in accordance with § 950.710.

Full-time student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the

educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Fungibility. Fungibility is a concept that permits an IHA to substitute any work item from the latest approved Five-Year Action Plan to any previously approved CIAP budget or CGP Annual Statement and to move work items among approved budgets without prior HUD approval.

Handicapped assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a handicapped or disabled family member and that are necessary to enable a family member (including the handicapped or disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Hard costs. The physical improvement costs in development accounts 1450 through 1475 of the Low-Rent Housing Accounting Handbook, 7510.1, as revised, that include: Account 1450 Site Improvements; Account 1460 Dwelling Structures; Account 1465.1 Dwelling Equipment—Nonexpendable; Account 1470 Nondwelling Structures; and Account 1475 Nondwelling Equipment.

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

High risk. See 24 CFR 85.12 and § 950.135.

Homebuyer. The member or members of a low-income family who have executed a homebuyer agreement with the IHA and who have not yet achieved homeownership.

Homebuyer agreement. A Mutual Help and Occupancy Agreement or a Turnkey III Homebuyer's Ownership Opportunity Agreement.

Homebuyer Association. In the Turnkey III program this means an incorporated organization (as defined in § 950.511) composed of all of the families who are entitled to occupancy pursuant to a Homebuyer Ownership Opportunity Agreement or who are homeowners.

Homeowner. A former homebuyer who has achieved ownership of his or her home and acquired title to the home.

HUD. The Department of Housing and Urban Development.

IHA homeownership financing. IHA financing for purchase of a home by an eligible homebuyer who gives the IHA

a promissory note and mortgage for the balance of the purchase price.

IHS. The Indian Health Service in the Department of Health and Human Services.

Indian. Any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

Indian area. The area within which an Indian Housing Authority is authorized to provide low-income housing.

Indian Housing Authority (IHA). An entity that is authorized to engage in or assist in the development or operation of low-income housing for Indians that is established either:

- (1) By exercise of the power of self-government of an Indian tribe independent of State law; or
- (2) By operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe. Any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

INS. The U.S. Immigration and Naturalization Service.

Interdepartmental agreement. The agreement among HUD, the Department of Health and Human Services, the Department of Interior, and other appropriate agencies, concerning assistance to projects developed and operated under the Act.

Latent defect. A design or construction deficiency that could not reasonably have been foreseen by the IHA or the Office of Native American Programs.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1.0 mg/cm², or .5 percent by weight.

Live-in aide. A person who resides with an elderly, disabled, or handicapped person or persons and who:

- (1) Is determined by the IHA to be essential to the care and well-being of the person(s);
- (2) Is not obligated for support of the person(s); and
- (3) Would not be living in the unit except to provide necessary supportive services. (See definition of annual income for treatment of a live-in aide's income.)

Local inflation factor. The weighted average percentage increase in local government wages and salaries for the area in which the IHA is located and non-wage expenses based upon the implicit price deflator for State and local government purchases of goods

and services. This weighted average percentage will be supplied by HUD. HUD anticipates that it will update the local inflation factor each year.

Low-income family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for an Indian area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Management improvement plan. A document developed by the IHA in accordance with § 950.135 that specifies the actions to be taken, including timetables, to correct deficiencies identified as a result of a management assessment.

Mastermeter system. A utility distribution system in which an IHA is supplied utility service by a utility supplier through a meter or meters and the IHA then distributes the utility to its tenants.

Medical expenses. Those medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

MH Contribution. Land, labor, cash, materials, or equipment—or a combination of these—contributed toward the development cost of a project in accordance with a homebuyer's MHO Agreement, credit for which is to be used toward purchase of a home.

MH Program. The Mutual Help Homeownership Opportunity Program.

MHO Agreement. A Mutual Help and Occupancy Agreement between an IHA and a homebuyer.

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

Modernization capability. An IHA has modernization capability for CIAP if it is capable of effectively carrying out the proposed modernization improvements. Where an IHA does not have a funded modernization program in progress, HUD will determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance. (See § 950.135.)

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements.

Modernization program. An IHA's program for carrying out modernization, as set forth in the approved CIAP budget for modernization funds. (See subpart I (CIAP) of this part.)

Modernization project. The improvement of one or more existing Indian housing developments under a new 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).

Monthly adjusted income. One twelfth of adjusted income.

Monthly Equity Payments Account (MEPA). A homebuyer account in the Mutual Help Homeownership Opportunity program credited with the amount by which each required monthly payment exceeds the administration charge.

Monthly income. One twelfth of annual income.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Near elderly family. A family whose head or spouse (or sole member) is at least 50 years of age but below the age of 62 years.

Net family assets. Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles are excluded, and, in the case of a family in which any member is actively engaged in a business or farming operation, the assets that are a part of the business or farming operation are excluded. In cases where a trust fund, such as individual Indian monies held by the BIA, has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. In determining net family assets, IHAs shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the

program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Noncitizen. A person who is neither a citizen nor national of the United States.

Nonroutine maintenance. (1) For purposes of the Turnkey III Program (Nonroutine Maintenance Reserve), nonroutine maintenance refers to infrequent and costly items of maintenance and replacement, including dwelling equipment such as a range or refrigerator, or major components such as heating or plumbing systems or a roof. Specifically excluded are maintenance expenses attributable to homebuyer negligence or to defective materials or workmanship.

(2) For purposes of the CIAP and Comprehensive Grant Modernization Programs under subpart I of this part and the applicability of wage rates, nonroutine maintenance refers to work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

NRRM. The nonroutine maintenance reserve account in the Turnkey III program established and maintained in accordance with § 950.519.

Office of Native American Programs (ONAP). The Office of HUD that has been delegated authority to administer programs under this part.

Operating budget. The IHA's operating budget (HUD form 52564) and all related documents, required by HUD to be submitted pursuant to the ACC.

Operating subsidy. Annual contributions for IHA operations made by HUD under the authority of section 9 of the Act. (See subpart J of this part with respect to rental projects. See also § 950.434 (Mutual Help Operating Subsidy) and § 950.523 (Turnkey III Operating Subsidy).)

Other income. Income to the IHA other than dwelling rental income and income from investments, except that, for purposes of determining operating subsidy eligibility, the following items are excluded: Grants and gifts for operations, other than for utility expenses, received from Federal, State, and local governments, individuals or private organizations; amounts charged to tenants for repairs for which the IHA incurs an offsetting expense; and legal fees in connection with eviction proceedings, when those fees are lawfully charged to tenants.

Other modernization (modernization other than emergency). A type of modernization program under the Comprehensive Improvement Assistance Program (CIAP) 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 management work items (including planning costs), and/or testing, professional risk assessments, interim containment, and abatement of lead-based paint.

Partnership process. A specific and ongoing process that is designed to ensure that residents, resident groups, and the IHA work in a cooperative and collaborative manner to develop, implement and monitor the CIAP or Comprehensive Grant Program. At a minimum, an IHA shall ensure that the partnership process incorporates full resident participation in each of the required program components.

Pay-back period. The number of years required to accumulate net savings to equal the cost of an energy conservation measure.

Performance funding system (PFS). The standards, policies, and procedures established by HUD for determining the amount of operating subsidy an IHA is eligible to receive for its owned rental projects, based on the costs of operating a comparable well-managed project.

PILOT. Payment in lieu of taxes. Includes all payments made by an IHA to the local governing body (or other taxing jurisdiction) for the provision of certain municipal services, including that portion of payments in lieu of taxes that is to be applied as a reimbursement of payments of off-site utilities. The amount charged is determined by the cooperation agreement, which is generally defined as 10 percent of shelter rent. Shelter rent is defined as dwelling rentals less total utility expenses.

Program reservation. A written notification by HUD to an IHA, that is

not a legal obligation, but that expresses HUD's determination, subject to fulfillment by an IHA of all legal and administrative requirements within a stated time, that HUD will enter into a new or amended ACC covering the stated number of housing units, or such other number as is consistent with funding reserved by HUD for the project.

Project. Housing developed, acquired, or assisted by an IHA under the Act, and the improvement of this housing.

Project for elderly families. A rental project or portion of a rental project assisted under the United States Housing Act of 1937 that was designated for occupancy by the elderly at its inception (and that has retained that character) or, although not so designated, for which the IHA gives preference in tenant selection (with HUD approval) for all units in the project, or for a portion of the units in the project, to elderly families.

Project units. All dwelling units of an IHA's projects. **Projected operating income level.** The per-unit per-month dollar amount of dwelling rental income plus nondwelling income, computed as provided in § 950.725.

Reasonable cost. Total unfunded hard cost needs for a development that do not exceed 90 percent of the computed total development cost limit for a new development with the same structure type and number and size of units in the market area.

Requested budget year. The budget year (fiscal year) of an IHA following the current budget year.

Resident groups. Democratically elected resident groups such as IHA-wide resident groups, area-wide resident groups, single development resident groups, or resident management corporations (RMCs).

Retail service. Purchase of utility service by IHA tenants directly from the utility supplier.

Rolling base period. The 36-month period that ends 12 months before the beginning of the IHA requested budget year, which is used to determine the allowable utilities consumption level used to compute the utilities expense level.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial

assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437-1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z-1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

Single person. A person who lives alone or intends to live alone, and who does not qualify as:

- (1) An elderly family;
- (2) A displaced person (as defined in this section); or
- (3) The remaining member of a tenant family.

Soft costs. The nonphysical improvement costs, that exclude any costs in development accounts 1450 through 1475.

State. Any of the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes.

Subsequent homebuyer. Any homebuyer other than the homebuyer who first occupies a home pursuant to a Mutual Help and Occupancy (MHO) agreement.

Substantial rehabilitation. A modernization program for a project that provides for all physical and management improvements needed to meet the modernization and energy conservation standards and to ensure long-term physical and social viability.

Successor homebuyer. A person eligible to become a homebuyer who has been designated by a current homebuyer to succeed to an interest under a homeownership agreement in the event of the current homebuyer's death or mental incapacity.

Surcharge. The amount charged by the IHA to a tenant, in addition to the Tenant Rent, for consumption of utilities in excess of the allowance for IHA-furnished utilities or for estimated consumption attributable to tenant-owned major appliances or to optional functions of IHA-furnished equipment. Surcharges calculated pursuant to subpart K of this part, based on estimated consumption where checkmeters have not been installed, are referred to as "scheduled surcharges."

Tenant-purchased utilities. Utilities purchased by the tenant directly from a utility supplier.

Tenant rent. The amount payable monthly by the family as rent to the IHA. Where all utilities (except telephone) and other essential housing services are supplied by the IHA, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the IHA and the cost

thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance.

Total development cost. The sum of all HUD-approved costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including the payment of carrying charges), and for otherwise carrying out the development of the project. The maximum total development cost excludes off-site water and sewer facilities development costs; costs normally paid for by other entities, but included in the development cost budget for the project for contracting or accounting convenience; and any donations received from public or private sources.

Total tenant payment. The monthly amount calculated under subpart D of this part. Total tenant payment does not include any surcharge for excess utility consumption or other miscellaneous charges (see subpart K of this part).

Unit approved for deprogramming. (1) A dwelling unit for which HUD has approved the IHA's formal request to remove the dwelling unit from the IHA's inventory and the Annual Contributions Contract but for which removal, i.e. deprogramming, has not yet been completed; or

(2) A nondwelling structure or a dwelling unit used for nondwelling purposes that the IHA has determined will no longer be used for IHA purposes and that HUD has approved for removal from the IHA's inventory and Annual Contributions Contract.

Unit months available. Project units multiplied by the number of months the project units are expected to be available for occupancy during a given IHA fiscal year. Except as provided in the following sentence, for purposes of this part, a unit is considered available for occupancy from the date on which the end of the initial operating period for the project is established until the time it is approved by HUD for deprogramming and is vacated or approved for nondwelling use. On or after July 1, 1991, a unit is not considered available for occupancy in any IHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined is nonviable.

Utilities. For purposes of determining utility allowances, utilities include electricity, gas, heating fuel, water, sewerage service, septic tank pumping/maintenance, sewer system hookup charges (after development), and trash and garbage collection. Telephone service is not included as a utility. For

purposes of IHA accounting, PFS and non-PFS, trash and garbage collection and maintenance and repair of any systems are considered maintenance expenses and not utility expenses.

Utilities expense level. The per-unit per-month dollar amount of utilities expense used in calculation of operating subsidy, as provided in § 950.715.

Utility allowance. An allowance for IHA-furnished utilities represents the maximum consumption units (e.g., kilowatt hours of electricity), that may be used by a dwelling unit without a surcharge against the tenant for excess consumption. An allowance for tenant-purchased utilities is a fixed dollar amount that is deducted from the total tenant payment otherwise chargeable to a tenant who has retail service, whether the charges are more or less than the amounts of the allowance. (See §§ 950.865 and 950.870.)

Utility reimbursement. The amount, if any, by which the utility allowance for tenant-purchased utilities for the unit, if applicable, exceeds the family's total tenant payment.

Very low-income family. A low-income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for an Indian area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State, or local governments.

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

Work Statements. Work Statements cover the second through 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.

§ 950.110 Assistance from Indian Health Service and Bureau of Indian Affairs.

Because HUD assistance under this part is not limited to IHAs of Federally recognized tribes, provisions in this part relating to assistance from BIA or IHS, or to required approvals, actions, or determinations by these agencies in connection with such assistance, are

applicable only to projects undertaken by IHAs of Federally recognized tribes or by regional housing authorities created by Alaska state law. These projects shall be developed promptly and operated in accordance with the provisions of this part and the Interdepartmental Agreement.

§ 950.115 Applicability of civil rights requirements.

(a) *Indian Civil Rights Act.* (1) The Indian Civil Rights Act (ICRA) (title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that no Indian tribe in exercising powers of self-government shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. The ICRA also states these equal protection and due process rights do not apply if they violate customs, traditions, and practices of the tribe. The ICRA applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases in which an IHA has been established by exercise of tribal powers of self-government.

(2) For IHAs established pursuant to State law, HUD will determine the applicability of the ICRA on a case-by-case basis. Factors considered may include the existence of recognized powers of self-government; the scope and jurisdiction of such powers; and the applicability of such powers to the area of operation of a particular IHA. Generally, determinations by HUD of the existence of recognized powers of self-government and the jurisdiction of such powers will be made in consultation with the Department of Interior-Bureau of Indian Affairs, and may be based on applicable legislation, treaties, and judicial decisions. The area of operation of an IHA may be determined by the jurisdiction of the governing body creating the IHA, any limitations within the enabling legislation, and judicial decisions.

(3) Projects of IHAs subject to the ICRA shall be developed and operated in compliance with its provisions and all HUD regulations thereunder.

(b) *Applicability of Title VI, the Fair Housing Act; and Title II of the Americans with Disabilities Act.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), which prohibits discrimination on the basis of race, color, or national origin in federally assisted programs; the Fair Housing Act (42 U.S.C. 3601–3619), which prohibits discrimination based on race, color,

religion, sex, or national origin in the sale or rental of housing; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131) apply to those IHAs created by State law for which HUD has determined that the ICRA is inapplicable. Actions taken by an IHA to implement the statutory admission restriction in favor of Indian families in the MH program, as set forth in § 950.416, shall not be considered a violation of any provision of either Title VI, the Fair Housing Act, or Title II of the Americans with Disabilities Act.

(c) *Indian Housing Act of 1988—Mutual Help program admissions.* For provisions generally limiting admission to the Mutual Help Homeownership Opportunity program to Indians and requiring findings of need for admission of non-Indians, see § 950.416.

(d) *Disability.* (1) Under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, HUD is required to assure that no otherwise-qualified disabled person is excluded from participation, denied benefits, or discriminated against under any program or activity receiving Federal financial assistance, solely by reason of his or her disability. IHAs shall comply with implementing instructions in 24 CFR part 8.

(2) The IHA shall comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157), and HUD implementing regulations (24 CFR part 40).

(e) *Minority Business Enterprise Development and Women's Business Enterprise Policy.* Executive Orders 12432 (3 CFR, 1983 Comp., p. 198) and 12138 (3 CFR, 1979 Comp., p. 39), respectively, apply to Indian Housing Authorities.

§ 950.117 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, IHAs shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* Residents who will not be required to move permanently, but who must relocate temporarily (e.g., to permit rehabilitation), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the housing, which may include a traditional home, to be made available for the temporary period;

(iii) The terms and conditions under which the resident may lease and occupy a suitable, decent, safe, and sanitary dwelling in the development following its completion; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* (1) A displaced person (defined in paragraph (g) of this section) shall be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(2) A comparable Indian housing unit, project-based Section 8 housing, or a privately-owned dwelling made affordable by a Section 8 Rental Certificate or Rental Voucher, may qualify as a comparable replacement dwelling for a person displaced from an Indian housing unit.

(d) *Real property acquisition requirements.* The acquisition of real property for a development is subject to the URA and the requirements described in 49 CFR part 24, subpart B, whether the acquiring entity is organized under State law or tribal law.

(e) *Appeals.* A person who disagrees with the IHA's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the IHA. A lower-income person who is dissatisfied with the IHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Area ONAP.

(f) *Responsibility of IHA.* (1) The IHA shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the IHA to comply with the requirements in 49 CFR part 24.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent

as other project costs. However, such assistance also may be paid from funds available from other sources.

(3) The IHA shall maintain records in sufficient detail to demonstrate compliance with the requirements of this section.

(g) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, demolition, or conversion of a unit to homeownership (Mutual Help Homeownership Opportunity (MH) Program) for a project assisted under this part or as a direct result of disposition in accordance with subpart M of this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the development that is made:

(i) After notice to the person by the IHA or property owner to move permanently from the property, if the move occurs on or after:

(A) For the comprehensive improvement assistance program (CIAP) and the comprehensive grant program (CGP) under subpart I of this part, 45 calendar days from before:

(1) The IHA issues the invitation for bids for the project, or

(2) The start of force account work, whichever is applicable; or

(B) For the disposition or demolition of Indian housing under subpart M of this part, the date of HUD approval of the IHA's proposal; or

(C) For other projects subject to this section, the date HUD approves the site for the project; or, if HUD site approval is not required, the date the IHA approves the site for the project;

(ii) Before the date described in paragraph (g)(1)(i) of this section, if the IHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, demolition, or conversion for the assisted project; or

(iii) By a resident of a dwelling unit, if any one of the following three situations occurs:

(A) The resident moves after the initiation of negotiations (as defined in paragraph (h) of this section) and the move occurs before the resident is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same development, under reasonable terms and conditions, upon its completion. Such reasonable terms and conditions include a monthly

rent and estimated average monthly utility costs that do not exceed the amount determined in accordance with § 950.325; or

(B) The resident is required to relocate temporarily, does not return to the development, and either:

(1) The resident is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(2) Other conditions of the temporary relocation are not reasonable; or

(C) The resident is required to move to another dwelling unit in the same development but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a displaced person (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, tribal, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the date described in paragraph (g)(1)(i) of this section and, before commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she will not qualify as a displaced person (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for the project.

(3) The IHA may, at any time, ask HUD to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a resident, the term "initiation of negotiations" means the following action:

(1) For the comprehensive improvement assistance program (CIAP) or comprehensive grant program (CGP)

under subpart I of this part, 45 calendar days before:

(i) The IHA's issuance of the invitation for bids for the project; or

(ii) The start of force account work, whichever is applicable;

(2) For an IHA purchase through an arm's-length transaction as described in 49 CFR 24.101(a)(1), the seller's acceptance of the IHA's written offer to purchase the property;

(3) For an IHA purchase that does not qualify as an arm's-length transaction, the delivery of the initial written purchase offer from the IHA to the Owner of the property. However, if the IHA issues a notice of intent to acquire the property, and a person moves after that notice, but before the initial written purchase offer, the initiation of negotiations is the actual move of the person from the property;

(4) For disposition or demolition of Indian housing under subpart M of this part, HUD approval of the IHA's proposal; or

(5) For other programs under this part 950, the notice to the occupant that he or she shall move permanently, or, if there is no notice, the person's actual move from the property.

§ 950.120 Compliance with other Federal requirements.

(a) *Environmental clearance.* Before obligating or expending funds for any physical improvements under a development or modernization project, the IHA will comply with the requirements of 24 CFR part 58.

(b) *Flood insurance protection.* HUD will not approve financial assistance for acquisition, construction, reconstruction, repair, or improvement of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

(1) Flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)); and

(2) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the "community" is the jurisdiction, such as an Indian tribe or authorized tribal organization, an Alaska native village, or authorized native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area.

(c) *Wage rates for laborers and mechanics.* (1) With respect to construction work on a project, including a modernization project (except for nonroutine maintenance work, as described in paragraph (2) of the definition of "nonroutine maintenance" in § 950.102), the IHA and its contractors shall pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a through 276a-5), to all laborers and mechanics who are employed by an IHA or its contractors for work or contracts over \$2,000.

(2) With respect to all maintenance work on a project, including nonroutine maintenance work (as described in paragraph (2) of the definition of "nonroutine maintenance" in § 950.102) on a modernization project, the IHA and its contractors shall pay not less than the wages prevailing in the locality, as determined or adopted (after a determination under State, tribal, or local law) by HUD pursuant to section 12 of the United States Housing Act of 1937 (42 U.S.C. 1437j), to all laborers and mechanics who are employed by an IHA or its contractors.

(3) Prevailing wage rates determined under State or tribal law are inapplicable under the circumstances set out in § 950.172(b).

(d) *Professional and technical wage rates.* All architects, technical engineers, draftsmen, and technicians employed in the development of a project shall be paid not less than the wages prevailing in the locality, as determined or adopted (after a determination under applicable State, tribal, or local law) by HUD.

(e) *Access to records: audits.* (1) HUD and the Comptroller General of the United States shall have access to all books, documents, papers, and other records that are pertinent to the activities carried out under this part, in order to make audit examinations, excerpts, and transcripts, in accordance with 24 CFR 85.42.

(2) IHAs that receive financial assistance under this part shall comply with the audit requirements of 24 CFR part 44. If an IHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the IHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the IHA's books and records into

auditable condition. The costs to place the IHA's books and records into auditable condition do not generate additional subsidy eligibility under this part.

(f) *Uniform administrative requirements.* The Uniform Administrative Requirements for Grants and Cooperative Agreements to States, Local, and Federally Recognized Indian Tribal Governments, as set forth in 24 CFR part 85, are applicable to grants under this part, except as specified in this part. However, the provisions of 24 CFR 85.36 have been incorporated in the procurement regulations (subpart B of this part).

(g) *Lead-based paint poisoning prevention.* See 24 CFR part 35 and subpart H of this part.

(h) *Coastal barriers.* In accordance with the Coastal Barriers Resources Act (16 U.S.C. 3501), no financial assistance under this part may be made available within the Coastal Barrier Resources System.

(i) *Economic opportunities for low- and very low-income persons.* IHAs shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations in 24 CFR part 135, as provided in part 135, to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). See also 24 CFR 950.170(c).

§ 950.125 Establishment of IHAs pursuant to State law.

An IHA may be established pursuant to a State law that provides for the establishment of IHAs with all necessary legal powers to carry out low-income housing projects for Indians.

§ 950.126 Establishment of IHAs by tribal ordinance.

(a) *Legal capacity of tribe to establish IHA.* Where an Indian tribe has governmental police power to promote the general welfare, including the power to create a housing authority, an IHA may be established by tribal ordinance enacted by the governing body of the tribe.

(b) *Form of ordinance.* The form of tribal ordinance shall be determined by the tribe and reviewed by the ONAP Administrator. The IHA shall also demonstrate that it has the legal authority to develop, own, and operate a public housing project under the Act. Unless an IHA is created as part of the tribal government, ordinances shall include language that allows the IHA to sue and be sued in its corporate name.

A sample format will be provided by HUD.

(c) *Approval or review of ordinance.* HUD shall not enter into an undertaking for assistance to an IHA formed by tribal ordinance unless such ordinance has been submitted to HUD.

(d) *Submission to HUD of documents establishing IHA.* (1) The tribal ordinance shall be submitted to HUD prior to receiving financial assistance.

(2) An IHA must certify that it has enacted the ordinance pursuant to any constitutional law or practice and has the local cooperation required by law.

§ 950.130 IHA Commissioners who are tenants or homebuyers.

(a) *Tenant or homebuyer commissioners.* No person shall be barred from serving on an IHA's Board of Commissioners because he or she is a tenant or homebuyer in a housing project of the IHA. A Commissioner who is a tenant or homebuyer shall be entitled to participate fully in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect him or her as well. However, no such Commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his or her capacity as a tenant or homebuyer), or be counted or treated as a member of the Board, concerning any matter involving his or her individual rights, obligations, or status as a tenant or homebuyer.

(b) *Commissioner as IHA employee.* A member of the IHA's Board of Commissioners shall not be eligible for employment by the IHA, except under extremely unusual circumstances in which it is documented that no one except the commissioner is qualified for the position and where the HUD Area ONAP approves in advance of the hiring.

§ 950.135 Administrative capability.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of the performance of each IHA, including remote reviews, on-site limited and full reviews, audits, surveys, and a formal annual review or risk analysis assessment, as may be necessary or appropriate to make the determinations required by this section, taking into consideration all available evidence. HUD will evaluate an IHA's compliance in the areas of development, modernization, and operations, including such functions as administration, financial management, occupancy, and maintenance.

(b) *Obligation to maintain.* (1) An IHA shall maintain administrative capability at all times throughout the term of the

ACC. In order to be considered administratively capable, an IHA shall administer the Indian housing program in accordance with applicable statutory requirements, HUD regulations, and contracts with no serious deficiencies. If any of the following conditions exist, it shall be considered a serious deficiency:

(i) The IHA is not financially stable, based on the most recent annual audit, technical assistance visit, or other reliable information;

(ii) An audit, conducted in accordance with 24 CFR part 44 and § 950.120, or HUD reviews (including monitoring findings) reveal deficiencies that HUD reasonably believes require corrective action and/or that corrective actions are not taken in accordance with established timeframes;

(iii) The IHA has management systems that do not meet the standards as set forth in 24 CFR part 85, and the lack of such systems may result in mismanagement or misuse of Federal funds;

(iv) The IHA has not conformed to the terms and conditions of previous awards, including for new construction, the Comprehensive Improvement Assistance Program, the Comprehensive Grant Program, or the use of Operating Subsidies;

(v) The IHA lacks properly trained and competent personnel at key management positions of the IHA; or

(vi) The IHA is in violation of the terms of applicable statutes, regulations, or Annual Contributions Contracts.

(2) If an IHA has serious deficiencies, HUD shall take any or all of the following actions:

(i) Issue a notice of deficiency;

(ii) Issue a corrective action order; or

(iii) Classify the IHA as "high risk"

(see 24 CFR part 85).

(c) *Notice of deficiency.* Based on HUD reviews of IHA performance and findings of any of the deficiencies in paragraph (b)(1) 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 appropriate action. The notification shall be in writing and contain the following:

(1) The deficiencies, i.e., the IHA actions and the statutory or regulatory or other requirements that have been violated;

(2) Recommended actions that may be taken by the IHA and a timeframe for completion;

(3) The documentation necessary for evidence that all actions have been completed.

(d) *Corrective action order.* (1) Based on HUD reviews of IHA performance

and findings of any of the deficiencies described in paragraph (b)(1) of this section, HUD may issue to the IHA a corrective action order. An order may be issued, whether or not a notice of deficiency previously has been issued with 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 by specifying the corrective actions that 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, and 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 unless HUD notifies the IHA that special circumstances exist that warrant giving immediate effect to the announced HUD action.

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

(4) The order shall be in writing and shall contain the following:

(i) The deficiencies, i.e., the IHA actions and the statutory or regulatory or other requirements that have been violated;

(ii) The corrective action(s) that shall be taken by the IHA and the time allowed for completing the corrective action(s);

(iii) The method of requesting reconsideration of the HUD action and the documentation necessary to evidence that all corrective actions have been completed.

(e) *Management improvement plan (MIP).* (1) When an IHA receives a corrective action order, it shall respond to the determination, in writing. This response shall include a management improvement plan to correct existing deficiencies. The plan shall describe in detail the method to be used and the time schedule to be maintained, shall be approved by the IHA Board of Commissioners, and is subject to HUD approval.

(2) After receiving the response from the IHA, HUD may direct the IHA to take one or more of the following actions:

(i) Submit additional information:

(A) Concerning the IHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for the IHA having deficiencies, as described in paragraph (b)(1) of this section;

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

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

(ii) Submit schedules for completing the work identified in the MIP;

(iii) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's MIP;

(iv) Not incur financial obligations, or to suspend payments for one or more activities;

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

(vi) Take such other corrective actions as HUD determines appropriate to correct the IHA deficiencies.

(3) HUD shall determine whether the IHA has satisfied, or has made reasonable progress towards satisfying, the management improvement plan.

(4) If the IHA does not satisfy the terms of the plan or does not act in good faith to meet the timeframes included in its MIP, HUD may impose additional restrictions. In addition, existing projects may be terminated, or other action may be instituted, as appropriate.

(f) *High risk determination.* An IHA may be classified as "high risk" and determined ineligible for certain types of future funding related to the classification of risk, or may be determined eligible for future funding but subject to special conditions or restrictions corresponding to the high risk classification. A corrective action order listing the specific violation shall accompany the high risk designation.

(1) If an IHA is determined to be high risk, the conditions that form the basis for that determination shall be sufficiently serious to warrant a determination to exclude the IHA from future funding of a particular type. The determination of high risk shall state the cause for that finding.

(2) An IHA may continue to be eligible for funding despite a finding that it is high risk—subject to special conditions and/or restrictions corresponding to the deficiencies found—if it has submitted a management improvement plan that was approved by HUD, and it has exhibited substantial compliance with the plan or a good faith effort to comply with the plan. If HUD determines that it is necessary to impose special conditions or restrictions, it will notify the IHA in writing of the applicable conditions or restrictions. One or more

of the following special conditions or restrictions may be imposed:

- (i) Submission to HUD of additional documentation;
- (ii) Submission to HUD of additional or more detailed financial reports;
- (iii) Additional project monitoring from the HUD Area ONAP;
- (iv) Additional requirements for technical assistance, from HUD or another entity approved by HUD;
- (v) Establishing additional approvals by HUD;
- (vi) Withholding some or all of the IHA's grant;
- (vii) Declaring a breach of the ACC grant amendment with respect to some or all of the IHA's functions; or
- (viii) Any other sanction authorized by law or regulation.

(g) *Appeals.* (1) An IHA may appeal a corrective action order or a determination of high risk status to the local HUD Administrator, Office of Native American Programs (ONAP). All appeals shall be made in writing within 30 calendar days of notice to the IHA of the HUD action and shall state clearly any justification or evidence that the action is unwarranted or too severe. If an appeal is filed concerning one or more action(s), the action(s) shall not take effect until HUD makes a final determination on the appeal or notifies the IHA that special circumstances exist that warrant giving immediate effect to the announced HUD action. The HUD Administrator shall respond to the appeal within 30 days of receipt of the appeal.

(2) An IHA may appeal a decision of the Administrator to the ONAP, Headquarters, only if the case involves actions related to a determination of ineligibility of funding for the upcoming funding cycle. An appeal of the Administrator's decision shall be made to ONAP, Headquarters in writing, stating the justification or evidence, and shall be received within 21 days of the date of the Administrator's decision. Decisions reviewed by Headquarters will be evaluated based on the facts as presented to the Administrator and on any aggravating or extenuating circumstances.

(3) The IHA's Board of Commissioners shall notify the tribal government of HUD's final determination to withhold or suspend funds or declare a breach of the ACC grant agreement, as well as the basis for, and consequences resulting from, such a determination.

Subpart B—Procurement

§ 950.160 Procurement standards.

(a) *HUD standards.* (1) *Applicability.* This subpart sets forth Federal

requirements to be followed by IHAs in the procurement of services, supplies, and goods.

(2) *Contracting authorization.* An IHA may execute contracts without HUD approval for the procurement of work, materials, equipment, and/or professional services, in accordance with paragraph (a)(3)(ii) of this section. Before the execution of contracts, the IHA Board of Commissioners will ensure that procedures are in place to ensure all ACC, statutory, and regulatory requirements are satisfied before the execution of contracts. The IHA Board of Commissioners will periodically review compliance with these procedures.

(3) *Limitations.* (i) An IHA shall not award a contract until the prospective contractor has demonstrated, to the satisfaction of the IHA, the technical, administrative, and financial capability to perform contract work of the size and type involved and within the time provided under the contract. The IHA shall not award a contract to a person or firm on the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs*, which is compiled, maintained, and distributed by the General Services Administration (GSA), or to a person or firm that is subject to a limited denial of participation issued by the HUD Office of Native American Programs. (See 24 CFR part 24.)

(ii) The IHA may execute or approve any agreement or contract for personnel, management, legal, or other services with any person or firm without the prior written approval of HUD, except under the following circumstances:

(A) When the term of the agreement or contract (including renewal) is in excess of two years; or

(B) When the amount of the agreement or contract is in excess of the amount included for such purpose in the HUD-approved development cost budget, Comprehensive Grant program budget, or operating budget, or an amount specified from time to time by HUD, as the case may be; or

(C) When the agreement or contract is for legal or other services in connection with litigation; or

(D) For contracts in excess of \$100,000 in the aggregate when the IHA proposes to award a contract based upon a single bid or proposal received except when the procurement meets the requirements of 24 CFR 950.165(d).

(4) *Records.* An IHA shall maintain records sufficient to detail the significant history of a procurement. The IHA shall maintain evidence in its files:

(i) That the solicitation and award procedures were conducted in compliance with State, tribal, or local laws and Federal requirements, including requirements for Indian preference and wage rates;

(ii) That the award does not exceed the approved budget amount and is not being made on the basis of a single bid or proposal; and

(iii) That the IHA reviewed the contractor's qualifications, checked to ensure that the contractor is not listed on the *GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs*, and determined that the contractor has the capacity to successfully complete the work or services under the terms and conditions of the contract. This determination shall consider the contractor's record of past performance, integrity, compliance with public policy, and financial and technical resources.

(5) *Contract administration.* An IHA is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement.

(6) *Competition.* All procurement transactions must be conducted in a manner providing full and open competition.

(7) *Contract cost and price.* An IHA must perform a cost or price analysis in connection with every procurement action, including contract modifications.

(b) *IHA standards.* (1) *IHA procedures.* Each IHA shall adopt, promulgate, and comply with rules or regulations for the procurement and administration of supplies, materials, services, and equipment in connection with the development and operation of projects. Upon adoption or modification, the IHA will promptly furnish a copy of these rules or regulations to HUD. These rules or regulations shall contain provisions on at least the following subjects:

(i) Procedures to ensure that all procurement transactions are conducted in a full and open competitive manner, consistent with the standards of 24 CFR 85.36;

(ii) Identification (by position title) of IHA officials authorized to enter into and approve contracts on a noncompetitive basis as authorized by 24 CFR 85.36(d)(4);

(iii) Procedures for inventory control;

(iv) Procedures for storage and protection of goods and supplies;

(v) Procedures for issuance of, or other disposition of, supplies and equipment;

(vi) Procedures for implementing Indian preference requirements;

(vii) Procedures for handling complaints and protests regarding procurement;

(viii) Standards of conduct governing IHA directors, board members, officers, and employees; and

(ix) Conflict of interest provisions governing directors, officers, employees, contractors/developers, and others doing business with the IHA.

(2) *Contract administration system.*

An IHA shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders.

(c) *Government-wide contract requirements.* A HUD regulation found at 24 CFR part 85 embodies government-wide administrative requirements for grants to State, local, and federally recognized Indian tribal governments (including grants received by IHAs). The contract provisions listed in 24 CFR 85.36(i) of that regulation are to be included in any IHA contracts.

§ 950.165 Methods of procurement.

(a) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$100,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(b) *Procurement by sealed bids (Invitations for Bid (IFB)).* Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 950.165(b)(1) apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) The invitation for bids will be publicly advertised and bids shall be

solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(c) *Procurement by competitive proposals (Request for Proposals (RFP)).* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(2) Proposals will be solicited from an adequate number of qualified sources;

(3) IHAs will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) IHAs may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, when price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms, even though they are a potential source to perform the proposed effort.

(d) *Procurement by noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or where after solicitation of a number of sources, competition is determined inadequate.

(1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under

small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:

(i) The item is available only from a single source;

(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(iii) HUD authorizes noncompetitive proposals; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(2) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

§ 950.170 Other requirements applicable to development contracts.

(a) *Bonding requirements.* For construction contracts for more than \$100,000, each contractor shall be required to provide bid guarantees and adequate assurance of performance and payment acceptable to HUD in accordance with 24 CFR 85.36(h). In the case of a Mutual Help project, the term "total contract price" as used with respect to each of the above assurance methods includes the value of all Mutual Help contributions for work, materials, or equipment to be provided to the contractor for use in performing the contract work. The following methods may be used to provide performance and payment assurance:

(1) Performance and payment bonds for 100 percent of the total contract price;

(2) Deposit with the IHA of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(3) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the IHA, subject to reduction during the warranty period commensurate with potential risk;

(4) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the IHA subject to reduction during the warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(b) *Executive Order 11246 (equal employment opportunity).* Contracts for construction work in connection with Projects under this part are subject to Executive Order 11246 (3 CFR, 1964-65 Comp., p. 339), as amended by Executive Order 11375 (3 CFR, 1966-70 Comp., p. 684), and to applicable

implementing regulations (24 CFR part 130; 41 CFR chapter 60), rules, and orders of HUD and the Office of Federal Contract Compliance Programs of the Department of Labor (DOL). Executive Order 11246 prohibits discrimination and requires affirmative action to ensure that employees or applicants for employment are treated without regard to their race, color, religion, sex, or national origin. Compliance with E.O. 11246, and related regulations, Orders, and requirements shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act.

(c) *Local area residents.* In accordance with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 CFR part 135, IHAs and their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations (including section 7(b) of the Indian Self-Determination and Education Assistance Act) to give low- and very low-income persons the training and employment opportunities generated by section 3 covered assistance (as this term is defined in 24 CFR 135.3(1)) and to give section 3 business concerns the contracting opportunities generated by section 3 covered assistance.

§ 950.172 Wage rates.

(a) *Determination of prevailing wage rates.* For the applicable method of determination of the prevailing wage rates to be paid laborers and mechanics, see § 950.120(c).

(b) *Preemption of prevailing wage rates.* (1) A prevailing wage rate determined under State or tribal law shall be inapplicable to a contract or IHA-performed work item for the development, maintenance, or modernization of a project whenever:

(i) The contract or the work item is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing and is for a project assisted with funds for low-income housing under the Act; and

(ii) The wage rate (the basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed in the development, maintenance, or modernization of a project exceeds whichever of the following Federal wage rates is applicable:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*) to be prevailing in the locality with respect to such trade;

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(D) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(2) For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position exceeds the Federal wage rate:

(i) When a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and

(ii) When a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(3) Whenever paragraph (b)(1)(i) of this section is applicable:

(i) Any solicitation issued by the IHA and any contract executed by the IHA for development, maintenance, or modernization of the project shall include a statement as prescribed in this paragraph, and failure to include this statement may constitute grounds for requiring re-solicitation. The statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract must be included whenever either of the following occurs:

(A) Such non-Federal prevailing wage rate exceeds:

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*) to be prevailing in the locality with respect to such trade;

(2) An applicable apprentice wage rate based thereon specified in an

apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency; or

(3) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(B) Such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(ii) The IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (b)(2) of this section to any of its own employees who may be engaged in the development, maintenance, or modernization of the project; and

(iii) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (b)(2) of this section shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the contract or IHA-performed work item for development, maintenance, or modernization of the project.

(4) Nothing in paragraph (b) of this section shall affect the applicability of any wage rate established in a collective bargaining agreement with an IHA or its contractors or subcontractors when such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (b)(1)(ii) of this section, nor does paragraph (b) of this section impose a ceiling on wage rates an IHA or its contractors or subcontractors may choose to pay independent of State law.

(5) The provisions of paragraph (b) of this section shall apply to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of an IHA on or after October 6, 1988.

§ 950.175 Indian preference requirements.

(a) *Applicability.* HUD has determined that grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians; and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(b) *Definitions.* Indian organizations and Indian-owned economic enterprises include either of the following:

(1) Any economic enterprise as defined in section 3(e) of the Indian Financing Act of 1974 (25 U.S.C. 1452); that is, "any Indian-owned (as defined by the Secretary of Interior) commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(2) Any Tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(8)); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities."

(c) *Preference in employment and training.* To the greatest extent feasible, IHAs and their contractors and subcontractors shall give preference and opportunities for training and employment in connection with the administration of grants awarded under this part and in the award of contracts funded under this part to Indians and Alaskan natives. The Indian Self-Determination Act defines "Indians" to mean persons who are members of an Indian tribe, and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) *Preference in contracting.* To the greatest extent feasible, IHAs shall give preference in the award of contracts funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each IHA shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement limited to Indian

organizations and Indian-owned enterprises;

(B) *Stage 2.* If responses to the solicitation of intent to bid under Stage 1, above, are received from more than one Indian organization or Indian-owned enterprise that is found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises (otherwise, bids may be solicited on an open, competitive basis); or

(iii) Develop and incorporate into their procurement policy, subject to HUD Area ONAP one-time approval, the IHA's method of providing preference. In no instance shall HUD approve a method that provides preference based upon affiliation or membership in a particular tribe or group of tribes.

(2) If the IHA-selected method of providing preference under paragraph (d)(1) of this section results in fewer than two responsible qualified Indian organizations or Indian-owned enterprises submitting a statement of intent, a bid, or a proposal to perform the contract at a reasonable cost, then the IHA shall:

(i) Re-compete the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-compete the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If only one bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bid or proposal.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36(d)(1) need not follow the formal requirements for public announcement and advertising for bids or proposals as provided in paragraph (d)(1) of this section. However, an IHA small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the solicitation and the contract documents.

(5) An IHA, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. IHAs may require prospective contractors to submit information prior to submitting a bid or proposal, or at the time of submission. Information requested by the IHA may include but is not limited to the following:

(i) Evidence showing fully the extent of Indian ownership, control, and interest;

(ii) Evidence of structure, management, and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the IHA that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The IHA shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan natives.

(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the IHA, take appropriate action pursuant to the subcontract upon a finding by the IHA or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(e) *Additional Indian preference requirements.* An IHA may, subject to applicable State, local, or tribal law, provide for additional Indian preference requirements as conditions for the award of, or in the terms of, any contract in connection with a project funded under this part. The additional Indian preference requirements shall be consistent with the objectives of the

Section 7(b) clause of the Indian Act and shall not result in a significantly higher cost or greater risk of nonperformance or longer period of performance. The additional Indian preference requirements permitted by this part do not include the imposition of geographic preferences or restrictions to the procurement process.

(f) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this subpart, including alternate methods enacted and approved in the manner described in this subpart B.

(1) Each complaint shall be in writing, signed, and filed with the IHA.

(2) A complaint must be filed with the IHA no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the IHA shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(4) Within 20 calendar days of receipt of a complaint, the IHA shall either meet, or communicate by mail or telephone, with the complaining party in an effort to resolve the matter. The IHA shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of submittal of the complaint to the IHA. The decision of the IHA shall constitute final administrative action on the complaint.

§ 950.190 Insurance.

(a) *Purpose.* This section implements policies concerning insurance coverage required under the Annual Contributions Contract (ACC) or Mutual Help Annual Contributions Contract (MHACC) between HUD and an IHA. These contracts require (in section 305 of the ACC and Article IX of the MHACC) that IHAs maintain specified insurance coverage for property and casualty losses that would jeopardize the financial stability of the IHAs. The insurance coverage is required to be obtained under procedures that provide for open and competitive bidding. The HUD Appropriations Act for Fiscal Year 1992 (Pub.L. 102-368) provided that an IHA could purchase insurance coverage without regard to competitive selection procedures when it purchases it from a nonprofit insurance entity owned and controlled by IHAs approved by HUD in accordance with standards established by regulation. This section specifies the standards.

(b) *Method of selection of insurance coverage.* While 24 CFR part 85 requires that grantees solicit full and open

competition for their procurements, the HUD Appropriations Act for Fiscal Year 1992 (Pub.L. 102-368) provides an exception to this requirement. IHAs are authorized to obtain any line of insurance from a nonprofit insurance entity that is owned and controlled by IHAs and approved by HUD in accordance with this section, without regard to competitive selection procedures. Procurement of insurance from other entities is subject to competitive selection procedures.

(c) *Approval of a nonprofit insurance entity.* Under the following conditions, HUD will approve a nonprofit self-funded insurance entity created by IHAs that limits participation to IHAs (and to nonprofit entities associated with IHAs that engage in activities or perform functions only for housing authorities or housing authority residents):

(1) An insurance company (including a risk retention group);

(i) The insurance company maintains a current license or is authorized to do business in the State or tribal area by the State Insurance Commissioner or Indian tribal governing body and has submitted documentation of this authority to HUD; and

(ii) The insurance company has not been suspended from providing insurance coverage in the State or tribal area or been suspended or debarred from doing business with the Federal Government. The insurance company is obligated to send to HUD a copy of any action taken by the authorizing official to withdraw the license or authorization;

(2) An entity not organized as an insurance company.

(i) The entity has competent underwriting staff (hired directly or engaged by contract with a third party), as evidenced by professionals with an average of at least five years of experience in large risk (exceeding \$100,000 in annual premiums) commercial underwriting or at least five years of experience in the underwriting of risks for public entity risk pools. This standard may be satisfied by submission of evidence of competent underwriting staff, including copies of resumes of underwriting staff for the entity;

(ii) The entity has efficient and qualified management (hired directly or engaged by contract with a third party), as evidenced by the report submitted to HUD in accordance with paragraph (d)(3) of this section and by having at least one senior staff person who has a minimum of five years of experience:

(A) At the management level of Vice President of a property/casualty insurance entity;

(B) As a senior branch manager of a branch office with annual property/casualty premiums exceeding \$5 million; or

(C) As a senior manager of a public entity risk pool. Documentation for this standard must include copies of resumes of key management personnel responsible for oversight and for the day-to-day operation of the entity;

(iii) The entity maintains internal controls and cost containment measures, as evidenced by an annual budget;

(iv) The entity maintains sound investments consistent with:

(A) The State insurance commissioner's requirements for licensed insurance companies, or other State statutory requirements controlling investments of public entities in the State in which the entity is organized, investing only in assets that qualify as "admitted assets"; or

(B) Any applicable provisions of Indian tribal law concerning investments, in the case of an IHA that is not subject to such State law;

(v) The entity maintains adequate surplus and reserves for undischarged liabilities of all types, as evidenced by a current audited financial statement and an actuarial review conducted in accordance with paragraph (d) of this section; and

(vi) Upon application for initial approval, the entity has proper organizational documentation, as evidenced by copies of the articles of incorporation, by-laws, business plans, copies of contracts with third party administrators, and an opinion from legal counsel that establishment of the entity conforms with all legal requirements under Federal, State, or tribal law. Any material changes made to these documents after initial approval must be submitted for review and approval before becoming effective.

(d) *Professional evaluations of performance.* Audits and actuarial reviews are required to be prepared and submitted annually to the HUD Office of Public and Indian Housing, for review and appropriate action, by nonprofit insurance entities that are not insurance companies approved under paragraph (c)(1) of this section. Selection of entities to perform such reviews shall comply with the competitive requirements of 24 CFR 85.36. In addition, an evaluation of other management factors is required to be performed by an insurance professional every three years. For fiscal years ending on or after December 31, 1993, the initial audit, actuarial review, and insurance management review required for a nonprofit insurance entity must be

submitted to HUD within 90 days after the end of the entity's fiscal year.

(1) The annual financial statement prepared in accordance with generally accepted accounting principles (including any supplementary data required by GASB 10) is to be audited by an independent auditor (see 24 CFR part 44), in accordance with generally accepted auditing standards. The independent auditor shall express an opinion on whether the entity's financial statement is presented fairly in accordance with generally accepted accounting principles. A copy of this audit must be submitted to HUD.

(2) The actuarial review must be done consistent with requirements established by the National Association of Insurance Commissioners and must be conducted by an independent property/casualty actuary who is an Associate or Fellow of a recognized professional actuarial organization, such as the Casualty Actuary Society. The report issued, a copy of which must be submitted to HUD, must include an opinion on any over or under reserving and the adequacy of the reserves maintained for the open claims and for incurred but unreported claims.

(3) A review must be conducted, a copy of which must be submitted to HUD, by an independent insurance consulting firm that has at least one person on staff who has received the professional designation of chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), of the following:

- (i) Efficiency of any Third Party Administrator;
- (ii) Timeliness of the claim payments and reserving practices; and
- (iii) The adequacy of reinsurance coverage.

(e) *Revocation of approval of a nonprofit insurance entity.* HUD may revoke its approval of a nonprofit insurance entity under this section when it no longer meets the requirements of this section. The nonprofit insurance entity will be notified in writing of the proposed revocation of its approval, and the manner and time in which to request a hearing to challenge the determination. The procedure to be followed is specified in 24 CFR part 26.

§ 950.195 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint that the IHA undertakes, in

accordance with the IHA's ACC or MHACC with HUD. The insurance coverage does not relieve the IHA of its responsibility for assuring that lead-based paint testing and abatement activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the IHA undertakes lead-based paint testing and abatement, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by IHA employees, the IHA must obtain a liability insurance policy directly to protect the IHA. If the work is being done by a contractor, the IHA may obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the IHA as an additional insured; or it may obtain such insurance directly. Insurance must remain in effect during the entire period of testing and abatement and must comply with the following requirements:

(1) *Named insured.* If purchased by the IHA, the policy shall name the IHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the IHA as an additional insured, in connection with performing work under the IHA's lead-based paint testing and abatement contract. If the IHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the IHA, the RMC shall also be an additional insured under the policy in connection with the lead-based paint testing and abatement contract. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage limits.* The minimum limit of liability shall be \$500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed \$5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability. However, it will be permissible for the policy to have a limit on the amount payable for defense costs. If a limit is applicable, it must not be less than \$250,000 per claim prior to such costs being deducted from the limit of liability.

(5) *Occurrence form policy.* The form used must be an "occurrence" form, or a "claims made" form that contains an

extended reporting period of at least five years. (Under an occurrence form, coverage applies to any loss if the policy was in effect when the loss occurred, regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is \$1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Exception to requirements.* Insurance already purchased by the IHA or contractor and in force on the date this rule is effective, which provides coverage for the hazards involved in the testing for and abatement of lead-based paint, shall be considered as meeting the requirements of this rule until the expiration of the policy. This rule is not applicable to architects, engineers, or consultants who do not physically perform lead-based paint testing and abatement work.

(d) *Insurance for the existence hazard.* An IHA may also purchase special liability insurance against the existence hazard of lead-based paint, although it is not a required coverage. An IHA may purchase this coverage if, in the opinion of the IHA, the policy meets the IHA's requirements, the premium is reasonable, and the policy is obtained in accordance with applicable procurement standards of this subpart B. If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

Subpart C—Development

§ 950.200 Roles and responsibilities of Federal agencies.

HUD, IHS, BIA, and other appropriate agencies shall coordinate their functions in accordance with the Interdepartmental Agreement. HUD shall take the lead role in the coordination of the construction of Indian housing under this part.

§ 950.205 Allocation.

HUD will allocate funds to Area ONAPs using a systematic process that considers the relative need for housing in each HUD area or other geographic area, based on the most recent and reliable data available. (See 24 CFR part 791, subpart D.)

§ 950.207 Eligibility.

(a) *Basic criteria.* An IHA is eligible to submit an application for new housing development and to be considered for funding if it meets the following criteria:

(1) Has been established in accordance with the provisions of § 950.125 or § 950.126; and

(2) Has not been determined to be administratively incapable, in accordance with § 950.135; and

(3) Meets all the performance thresholds contained in paragraph (b) of this section.

(b) *Performance thresholds.* An IHA shall be in compliance with the following requirements for all projects in development or operation to be considered for additional new housing development funding. The ONAP Administrator may waive performance thresholds for good cause.

(1) Environmental Review requirements of § 950.247;

(2) Fiscal closeout requirements of § 950.285;

(3) Final site approval and site control requirements of § 950.250(c);

(4) Firm commitments from utility suppliers in accordance with § 950.235(c) prior to the execution of a construction contract, contract of sale, or start of construction; and

(5) Pre-construction certification requirements of § 950.260.

§ 950.210 Authority for proceeding without HUD approval.

(a) *IHA authority to proceed.* An IHA shall proceed with development functions without obtaining HUD approval except as otherwise specified in this part. An IHA shall accomplish necessary planning and administration activities to assure the timely completion of the development grant (generally six years from the initial development grant approval to development grant closeout).

(b) *Rescinding authorization.* At any time during the development process, HUD may make a determination, subject to the procedures specified under § 950.135, that an IHA shall obtain HUD approval of additional processing steps. If such a determination is made, HUD shall explain in writing the reasons for the determination and specify any processing steps that are subject to additional technical assistance and prior approval by HUD.

(c) *Time constraints.* The IHA shall commence project planning so that construction begins within 24 months of the initial development grant approval date. HUD shall not recapture funds reserved for the project during the 30-month period following the initial development grant approval. Excluded from the computation of the 30-month period shall be any delay caused by the failure of HUD to process such project within a reasonable period of time, any environmental review requirement

(other than the failure to initiate the environmental review process by the responsible entity), any legal action affecting the project, or any other factor beyond the control of the IHA. If an IHA fails to reach construction start for a project within 24 months of the date of initial development grant approval, HUD shall analyze the circumstances that have resulted in the failure to reach construction start and, subject to the availability of resources, shall provide assistance to the IHA to enable construction start within 30 months after the date of initial development grant approval.

§ 950.215 Production methods.

(a) *Choice and approval of production method.* The IHA may utilize any production method or combination of production methods as long as the production method(s) is not in conflict with the procurement requirements of 24 CFR 85.36 and subpart B of this part. The IHA shall advise HUD on its application of its choice of production methods. Prior HUD approval is required if the method selected is Force Account or if the IHA proposes to utilize a noncompetitive procurement method. If HUD disapproves the IHA's preferred development method, it shall provide a justification to the IHA. Production methods utilized in the Indian Housing program are Conventional, Turnkey, Modified Turnkey, Self-Help, Acquisition, and Force Account.

(b) *Special requirements for approval of Force Account method.* The Force Account method may be used only if approved by the Area ONAP. The IHA shall demonstrate that it has the technical and administrative capabilities to complete the project within the projected time and budget. The Area ONAP shall require that a tribe or IHA agree in writing:

(1) To cover any costs in excess of those included in the HUD-approved development cost budget;

(2) Demonstrate that it has the financial resources to meet the excess costs up to a specified amount; and

(3) Provide some form of security acceptable to HUD to cover excess costs. For this purpose, an IHA may use attachable assets including funds maintained in its reserve for replacements received from the sale of Mutual Help units. The Area ONAP may approve the Force Account method without requiring the IHA or tribe to provide security to cover excess costs if the IHA agrees to develop the project in small stages with additional HUD monitoring and oversight. Under such approval, the IHA continues to be

obligated to cover costs in excess of those included in the HUD-approved development cost budget.

§ 950.220 Total development cost.

(a) *Total development cost standard.* Total development cost (TDC) standards, which establish the maximum allowable cost for developing Indian housing projects, are determined as a per unit cost for various unit sizes, structure types, and geographic areas, and are published annually by HUD.

(b) *Resident training and insurance.* The total development cost of a project may include costs associated with a HUD-approved tenant or homebuyer counseling program (in accordance with the provisions of § 950.453) and the insurance premiums for the first three years of project operation with no obligation for reimbursement from operating receipts. The anticipated cost of such insurance premiums may be charged to the development and placed in escrow by the IHA to enable closeout of the development grant.

(c) *Costs excluded from TDC.* The TDC standard for a project includes all costs associated with the project except for off-site water and sanitation facilities infrastructure and donations received from any public or private source. Costs for off-site water and sanitation facilities infrastructure and any donations received shall be included in the project development cost budget but will be excluded from the calculation of the project TDC limit.

§ 950.225 Application.

(a) *Submission to HUD.* (1) An eligible IHA may submit an application for a project after HUD issues a notice of funding availability (NOFA).

(2) The application shall be on the form prescribed by HUD and shall be accompanied by all the legal and administrative attachments required by the form.

(3) State-created IHAs for non-Federally recognized tribes shall certify that sites selected shall be within the IHA's area of operation. For purposes of this section "area of operation" is defined as a land area with defined geographical boundaries, which has a significant concentration of Indian families who are:

(i) Not served by a PHA or tribally-created IHA; and

(ii) Have a bona fide historic presence or connection with the land, as recognized by the Federal Government or a State.

(b) *Rating process.* (1) Applications shall be rated and points shall be awarded for at least the following categories:

(i) Relative unmet need for housing;
 (ii) Relative IHA occupancy rate compared to the occupancy rates of other eligible IHAs submitting applications;
 (iii) Length of time since the last development grant approval date for each IHA compared to other eligible IHAs submitting applications;
 (iv) Current IHA development pipeline activity; and
 (v) Other factors identified in a NOFA.

(2) After the completion of the rating process, all applications shall be combined into one list to produce an ordered ranking to be used in determining applications to be funded.

§ 950.227 Initial development grant approval and ACC execution.

(a) *Grant approval.* (1) For those applications selected for funding, the Area ONAP shall issue a development grant approval that shall specify housing type, household type, development method, the amount of funds reserved, the minimum and maximum number of total units, and the number of units of each bedroom size to be developed. The total project development cost is limited to the funds designated in the development grant approval plus any donations to the project.

(2) As long as the total project development cost limit and the funds reserved in the development grant approval are not exceeded, the IHA may change any of the elements specified in the development grant approval it determines necessary to complete the project. If an IHA decides to change any of the elements specified in the development grant approval, it shall submit to HUD a request to amend the development grant approval, including documentation supporting the request. HUD shall either approve the request or notify the IHA of the reason the request is not approved. Amendment funds may not be used to increase the project size.

(b) *Execution of ACC.* (1) Upon issuance of the development grant approval by HUD, the IHA and HUD may execute an ACC to cover the eligible costs of the project with respect to the number of units covered by the development grant approval.

(2) The ACC must be amended, if required, upon completion of project planning to correctly identify the number of units in the development, program type, and production method.

§ 950.229 Expenditure of funds.

(a) *Development Cost Budgets.* The IHA shall submit for HUD review and acceptance a development cost budget

showing anticipated expenditures and any needed supporting documentation before funds can be obligated or expended.

(1) The IHA may submit a development cost budget for planning for an amount that the IHA demonstrates is required for the planning of the project. A development cost budget for planning may include costs for comprehensive planning. (See paragraph (c) of this section.)

(2) The IHA shall submit a construction stage development cost budget, in accordance with the procedures specified under § 950.260.

(b) *Limitations.* (1) An IHA shall not incur any development cost in excess of the amount identified on the ACC for that project.

(2) Obligation or expenditure of development funds is limited to the amounts reviewed and accepted by HUD in the latest development cost budget.

(3) Use of development funds of projects under ACC to cover costs for another project is strictly prohibited except as provided for under paragraph (c) of this section.

(c) *Comprehensive housing plan.* At the request of an IHA, HUD may approve up to one percent of the development grant to establish and/or update a master housing plan for the IHA's area of operation. The plan shall contain such elements as proposed housing sites, existing and proposed off-site roads, and existing and proposed water and sewer facilities. In addition, the plan shall address geographical and topographical features, as well as socio-economic and cultural factors, such as employment opportunities, schools, and services, that have an impact on the placement of residential housing. The plan shall be approved by resolution of the tribal council. The one-percent cost for the comprehensive housing plan may be charged to the development and placed in an escrow or revolving fund account by the IHA to enable closeout of the development program and/or pooling of planning resources.

§ 950.231 Project coordination.

(a) *Project coordination meeting.* Upon notification of a development grant approval, the IHA shall schedule a project coordination meeting to plan and schedule the steps needed to develop the project. The IHA shall invite to the project coordination meeting the project designer (if known) and any tribal, State, or Federal officials who will participate in the development of the project. At the project coordination meeting, the IHA shall establish a schedule of planning

activities with target dates for completion of key activities, including the submission to HUD of a construction stage development cost budget and other requirements contained in § 950.260. The schedule, and any amendments thereto, shall be provided to meeting participants and to HUD to be used in planning and monitoring activities.

(b) *Citizen participation.* The IHA shall hold at least one public meeting at which comments are solicited on the proposed sites and project design from potential occupants, as well as from other interested parties. The meeting may be held in conjunction with a regularly scheduled board meeting or may be held separately. In either case, adequate notice shall be provided to the public to enable full participation. The IHA shall give maximum consideration to all public comments in the design of the project. Failure to hold a public meeting or failure to consider public comments in the design of the project shall be grounds for HUD to rescind authorization, in accordance with the procedures specified in § 950.210(b).

§ 950.235 Site selection criteria.

(a) *Relation to tribal, local, and regional plans.* Selected sites shall comply with all applicable tribal, local, and/or regional plans.

(b) *Access roads.* Access roads up to the boundaries of multi-unit sites shall be provided by the BIA, the tribe, or other appropriate agency and shall not be an eligible cost of the project. Access roads up to the boundaries of individual homesites in a scattered site project shall be provided by the homebuyer, the tribe, or other appropriate agency and shall not be an eligible cost of the project. Access roads shall be maintained by a responsible local entity to provide safe and suitable vehicular access. No site shall be approved unless such access roads exist, or a written assurance has been obtained from the responsible entity that roads shall be constructed before commencement of project construction.

(c) *Utilities.* Before final site approval, the IHA shall obtain firm commitments from utility suppliers that all utility services necessary for the operation of the project are available or will be available at the time of project occupancy.

(d) *Physical characteristics of site.* The physical characteristics of a site shall facilitate overall economy in site preparation, construction, and management. Only reasonable costs for surveys, planning, test borings, and test wells shall be included in the development cost of the project.

(e) *Size of sites.* An individual homesite, whether a scattered site or included in a multi-unit site, shall not exceed the size determined by the IHA or by tribal or local policy to be necessary for the use and occupancy of the dwelling unit.

(f) *Access to sites.* For a Mutual Help unit, each homesite shall be legally and practicably available for use by another homebuyer. If a site is part of other land owned by the prospective homebuyer, the lease or other conveyance to the IHA shall include the legal right of access to the site by any substitute homebuyer.

§ 950.240 Types of interest in land.

(a) *Trust or restricted land.* Sites on tribally or individually owned trust or restricted land (as defined in 25 CFR 151.2) shall be leased to the IHA for a term of not less than 50 years (25 years, automatically renewable for an additional term of 25 years) on a HUD-approved form of lease, which shall provide that the lease cannot be terminated before its expiration without the consent of the IHA, and while the site remains under the ACC, by HUD.

(b) *Unrestricted land.* Sites on unrestricted land shall be either conveyed to the IHA in fee or leased to the IHA on a HUD-approved form of lease for a term of not less than 50 years.

(c) *Tax exempt status.* Notwithstanding the type of interest in land, all project property shall be exempt from local or State imposed real or personal property tax in accordance with section 6(d) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(d)).

§ 950.245 Appraisals.

(a) When the cost of a site is to be charged to the IHA's development cost and the cost of the site exceeds \$1,500 per dwelling unit, an appraisal shall be made in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601-4655). Government-wide implementing regulations are at 49 CFR part 24. The cost of donated land may be assumed to be \$1,500 per unit and no appraisal is required. An appraisal of donated land shall be performed only if the IHA determines that the value to be attributed to the site exceeds \$1,500.

(b) When the interest to be appraised is a leasehold interest in tribally or individually owned trust or restricted land and comparable leasehold transactions are not available, the appraiser shall estimate the value of the land as if alienable in fee, based on a comparison of the land being valued with sales of fee interests in comparable

land in the same or competing market areas.

§ 950.247 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law that further the purposes of that act are most effectively implemented in connection with the expenditure of Indian housing funds, the IHA shall comply with the Environmental Review Procedures specified under 24 CFR part 58. Upon completion of the environmental review, the IHA shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58. Costs associated with completing the environmental review are eligible project expenses.

§ 950.250 Site approval.

(a) *IHA certification.* Included in the IHA's certifications pursuant to § 950.260 shall be a certification to HUD that all conditions that would prevent the site from being included in the project have been satisfactorily addressed, and that there are no legal or physical reasons that would interfere with the occupancy and use of the site during the term of the ACC. Such certification shall be conditioned only upon final acquisition or execution of a lease on the property.

(b) *Tentative site approval.* (1) When a site is proposed for use, the IHA shall inspect the property to ascertain its suitability for development. When appropriate, the IHA shall request an inspection of any proposed site by utility suppliers, the BIA, the IHS, and a representative of the local governing body and shall include each agency's comments in a list of potential site approval concerns. Tentative approval of the site by the IHA occurs when the IHA determines that:

- (i) A site can be economically included in the project;
- (ii) A site does not contain any legal or physical conditions that cannot be adequately addressed that would exclude it from consideration for acquisition; and
- (iii) The environmental review of the site has been completed (see § 950.247) and a finding of no significant impact issued.

(2) Tentative site approval shall not be determined until the requirements for compliance with local governmental approval have been met. (See 24 CFR part 791.)

(c) *Final site approval.* (1) Final site approval occurs when all of the conditions stated in the tentative approval have been appropriately

addressed and, with respect to trust land or restricted land over which the BIA has authority, the BIA has given either unconditional concurrence for final site approval or concurrence conditioned only on subsequent execution of site leases or right-of-way easements. If the BIA has given final site approval conditioned on subsequent execution of site leases or right-of-way easements, the IHA shall obtain from the BIA written assurance that a valid lease or easement, executed by all the necessary parties, can be obtained within a reasonable time and before start of construction.

(2) Final site approval on all sites for the project shall occur:

- (i) Before any commitment is made to acquire or lease any site; and
- (ii) Before construction is started, except for a project developed under the acquisition method for restricted land sites, in accordance with paragraph (c)(3) of this section. In addition, leases and necessary rights-of-way shall be obtained before solicitation of construction bids or before construction may begin on any units.

(3) With respect to trust or restricted land sites, construction may start before final site approval of all sites only when the following conditions have been met:

- (i) All sites for the project have tentative site approval;
- (ii) At least 50 percent of the sites have final site approval;
- (iii) HUD is satisfied that the balance of the sites will meet the requirements for final site approval no later than one year from execution of the construction contract; and

(iv) The construction contract provides that if all sites, finally approved and with executed leases, have not been delivered by the IHA to the contractor/developer within one year from execution of the construction contract (or HUD-approved extension), the construction contract shall be reduced by the amount attributable to the units to be developed on the undelivered sites.

§ 950.255 Design criteria.

(a) *Building standards.* (1) The IHA shall use tribal or, if appropriate, local government building codes that meet or exceed standards of national building codes. In the absence of tribal or local government adopted building codes that meet the requirements of this section, the IHA Board of Commissioners shall specify, by Resolution, the building codes to be followed in the development of its housing.

(2) Codes used shall provide sufficient flexibility to permit the use of different designs and materials; shall include

standards for reasonable site designs; shall give proper consideration to the needs of physically handicapped persons for ready access to, and use of, housing assisted under this part (see 24 CFR part 8); and shall be sufficient to produce a decent, safe, and sanitary home.

(3) Modifications to model national building codes are authorized if a tribe or, in the absence of tribally adopted codes, an IHA determines to make special provisions in its codes for traditional and culturally oriented design features.

(b) *Fuel and energy consumption.* (1) Newly constructed housing shall meet or exceed the requirements of the latest Model Energy Code published by the Council of American Building Officials. In selecting from among design options for heating, cooking, and electrical systems, maximum attention shall be given to cost, adequacy, maintenance of the system, and the long-term reliability of fuel supplies. Where fuel is not locally available at low cost, alternate systems such as wind, solar, or coal may be used and included in the project cost.

(2) Life-cycle cost-effective energy performance standards established by HUD to reduce the operating costs of Indian housing developments over the estimated life of the buildings shall apply to all new Indian housing developments under this part.

(c) *Moderate housing design.* The IHA shall select a moderate design standard taking into consideration anticipated long-term operating costs.

(d) *Water provisions for Alaska.* Alaska Native housing assisted under this part shall be designed and constructed to include water storage tanks when the housing is not served by or scheduled to be served by piped utilities. These tanks shall be no less than 100 gallons in capacity and constructed to be accessed from outside the house.

(e) *Design approval.* The IHA shall obtain the approval of project designs by all local or tribal regulatory agencies, by the BIA for on-site streets, and the IHS, where appropriate, for community water and/or sewer facilities. The IHA shall assure the design meets applicable building codes, that the project can be constructed within the amount of funds reserved for the development, and that the project is financially feasible including ongoing maintenance cost considerations.

§ 950.260 Construction stage development cost budget and certifications.

(a) *IHA submission.* Upon completion of project planning, an IHA shall submit to HUD a construction stage

development cost budget, certifications attesting to the completion of all preconstruction requirements, and project characteristics information. Submission of this information shall be in accordance with the schedule established at the project coordination meeting. The IHA's timely submission of the information specified in this paragraph, in the form prescribed by HUD, shall be a factor in HUD's evaluation of an IHA's administrative capability in accordance with § 950.135. The information and documentation submitted by the IHA shall demonstrate the financial feasibility of the project, the legal sufficiency to proceed with construction, and compliance with all ACC, statutory, and regulatory requirements.

(b) *HUD actions.* HUD shall review the IHA submittals and shall determine whether they meet the requirements specified in paragraph (a) of this section. If the submittals meet the requirements of this section, HUD will notify the IHA. If the submission does not meet the requirements of this section, HUD shall notify the IHA of the reasons and allow the IHA to amend and resubmit the documents.

§ 950.265 Construction and inspections.

(a) *Construction start.* Following HUD review and acceptance of the IHA submittals, the IHA shall commence final preconstruction activities and begin construction of the development.

(b) *Notification.* Upon award of construction contract, execution of a contract of sale, or construction start, the IHA shall notify all participating agencies. The notification to HUD shall include a revised development cost budget, if appropriate, and a statement that the IHA has met all ACC, statutory, and regulatory requirements for the applicable development method. Upon request, the IHA shall submit to HUD copies of the construction plans and specifications, the construction contract or contract of sale, detailed plans for Force Account construction management, the notice to proceed, or other applicable contracting documents.

(c) *Inspections and Monitoring.* (1) Whatever the development method used, the IHA shall be responsible for obtaining inspections throughout the construction period including the frequency of inspections and the procedures to be used to assure completion of quality housing in accordance with the contract documents. Inspections shall be performed by an architect, engineer, or other qualified person selected by the IHA.

(2) The IHA shall coordinate inspections with tribal or local regulatory agencies and, where applicable, the BIA and/or IHS, to assure that all governing codes and other requirements are met.

(3) HUD representatives or agents may visit construction sites to evaluate the IHA's contract administration. These visits are not inspections of the quality of construction and shall not be construed by the IHA as construction inspections.

§ 950.270 Construction completion and settlement.

(a) *Final inspection.* The IHA shall assure that all work is satisfactorily completed, in accordance with the terms of the construction contract, prior to scheduling a final inspection. The final inspection shall be made jointly by the IHA and the contractor. Where appropriate, the IHA shall notify tribal or local regulatory agencies, the BIA, the IHS, and HUD before this inspection to provide them with the opportunity to participate in the final inspection of all or part of the work. In a MH project, homebuyers shall also be invited to participate in the inspection of their homes, but acceptance shall be by the IHA. Maximum consideration shall be given to all homebuyer concerns.

(b) *Contract settlement.* (1) If the final inspection discloses no deficiencies other than punch list items or seasonal completion items, the IHA shall, as soon as practical, develop an interim Certificate of Completion to enable partial settlement of the contract. The interim Certificate shall detail the items remaining and set forth a schedule for their completion, and shall allow the IHA to accept the units (or stage) for occupancy. Upon completion of the interim Certificate and receipt of the contractor's Certificate and Release, the IHA shall release the monies due the contractor/developer less withholdings in accordance with the construction contract.

(2) The contractor/developer shall complete the punch list items in accordance with the time schedule contained in the interim Certificate. The IHA may pay the contractor/developer for items that are completed to the satisfaction of the IHA. If the IHA is satisfied that the applicable requirements of the construction contract and the interim Certificate have been met, the IHA shall prepare a final Certificate of Completion and release the amounts withheld to the contractor/developer.

(c) *Notification to HUD.* (1) Upon acceptance of the project or any part thereof, the IHA shall notify HUD of

such action. When all units within a project are accepted, the IHA shall provide a notification to HUD of the date the project was fully available for occupancy by residents.

(2) The IHA shall notify HUD when all units in the project are occupied.

§ 950.275 Warranty inspections and enforcement.

(a) The construction contract shall specify the warranty periods applicable to items completed as part of the contract. It shall also provide for assignment to the IHA of manufacturers' and suppliers' warranties covering equipment or supplies.

(b) The IHA shall conduct an inspection of each dwelling unit at least once not later than six months after the start of the contractor's warranty period. A separate or final warranty inspection shall be made in time to exercise the IHA's rights before expiration of the contractor's warranties. Each inspection shall cover all items under warranty at the time of the inspection, including items covered by manufacturers' and suppliers' warranties. At each inspection, the IHA shall obtain a signed statement from the occupants as to any deficiencies in the structure, equipment, grounds, etc., so that it may enforce any rights under applicable warranties.

§ 950.280 Correcting deficiencies.

(a) *Responsibility.* The IHA shall pursue correction of any deficiencies against the responsible party (e.g., architect, contractor/developer or MH homebuyer) as soon as possible after discovering the deficiencies. Where the costs of correcting deficiencies cannot be recovered from the responsible party and/or the deficiency requires immediate correction to protect life or safety or to avoid further damage to the project unit(s), the IHA may apply to HUD for amendment of the development budget to provide the funds required. The IHA may also use operating receipts to cover such costs. The IHA shall be responsible for correction of any deficiencies that could have been detected and/or corrected during the warranty period if the IHA had inspected at the appropriate time or had pursued correction of deficiencies against the responsible parties.

(b) *Amendments.* (1) HUD may, but is not obligated to, provide additional funding to the IHA to correct deficiencies. The ACC may be amended to provide amounts needed to correct deficiencies (and any resulting damage) in design, construction, and equipment only where there is substantial evidence that it is not possible to obtain timely

correction or payment by the responsible parties, including the source of the performance bond.

(2) In the case of a MH home, the additional cost for correcting deficiencies in design, construction, or equipment (and any damage resulting therefrom) shall not result in an increase in the homebuyer's purchase price. If a homebuyer is not in compliance with the MHO Agreement, the IHA shall reach agreement with the homebuyer to correct the noncompliance before approving or beginning the corrective work.

§ 950.285 Fiscal closeout.

The IHA shall submit to HUD a certificate of actual development cost within 24 months of the date of full availability (see § 950.270(c)(1)), or such later date as may be approved by HUD, in a form prescribed by HUD. Audit verification of the actual development costs shall be submitted to HUD within 36 months of the date of full availability. The audit shall follow the requirements of 24 CFR part 44 (Single Audit Act of 1984). If the audit of the actual development costs indicates that excess funds have been advanced to the IHA, the IHA shall dispose of the excess as HUD directs. If the audited development cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD directs. If the IHA fails to submit a certificate of actual development cost or audit within the prescribed times, the Area ONAP may make a determination that all development activities have been completed as of a specified date, and inform the IHA that such action has been taken and that no additional costs may be incurred for the development. The Area ONAP shall then proceed with the fiscal close-out of the development.

Subpart D—Operation

§ 950.301 Admission policies.

(a) *Admission policies.* (1) The IHA shall establish and adopt written policies for admission of participants. The policies shall cover all programs operated by the housing authority and, as applicable, will address the programs individually to meet their specific requirements (i.e., Rental, MH, or Turnkey III). A copy of the policies shall be posted prominently in the IHA's office for examination by prospective participants. (See § 950.416 with respect to Mutual Help admission policies.)

(2) These policies shall be designed:

(i) To attain, to the maximum extent feasible, residency that includes families with a broad range of incomes and that avoids concentrations of the

most economically deprived families with serious social problems;

(ii) To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

(iii) To give a preference in selection of tenants and homebuyers to applicants who qualify for a Federal preference, ranking preference, or local preference, in accordance with §§ 950.303 through 950.307; and

(iv) To establish objective and reasonable policies for selection by the IHA among otherwise eligible applicants.

(3) The IHA admission policies shall include the following:

(i) Requirements for applications and waiting lists;

(ii) Description of the policies for selection of applicants from the waiting list that includes the following:

(A) How the Federal preferences (described in § 950.303) will be used;

(B) How any ranking preferences (described in § 950.303) will be used;

(C) How any local preferences (described in § 950.303) will be used;

and

(D) How any residency preference will be used;

(iii) Policies for verification and documentation of information relevant to acceptance or rejection of an applicant;

(iv) Policies for resident transfer between units, projects, and programs. For example, an IHA could adopt a criterion for voluntary transfer that the resident had met all obligations under the current program, including payment of charges to the IHA and completion of maintenance requirements;

(v) Policies for compliance with 24 CFR part 750, which requires applicants and participants to disclose and verify social security numbers at the time eligibility is determined and at later income reexaminations; and

(vi) Policies for compliance with 24 CFR part 760, which requires applicants and participants to sign and submit consent forms for the obtaining of wage and claims information from State wage and information collections agencies.

(4) These selection policies shall:

(i) Be duly adopted; and

(ii) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or residents upon request, free or at their expense, at the discretion of the IHA.

(5) Such policies shall be submitted to the HUD Area ONAP upon request from that office.

(6) "Residency preference" means a preference for admission of families

living in the jurisdiction of the IHA. Residency provisions are subject to the following:

(i) Residency requirements are not permitted;

(ii) A residency preference may not be based on how long the applicant has resided in the jurisdiction; and

(iii) Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

(b) *Income limits.* (1) A family shall be a low-income family, as defined in § 950.102, to be eligible for admission. (With respect to eligibility for the Mutual Help program, see special provisions of § 950.416.)

(2) In extremely unusual circumstances, the IHA may request that HUD increase or decrease income limits for low-income families or for very low-income families in the Indian area because of unusually high or low family incomes. Such a request can be granted only by joint approval of HUD's Assistant Secretary for Housing and Assistant Secretary for Public and Indian Housing, after consultation with the Secretary of Agriculture (if the income limits are being established for a "rural area" as defined in section 520 of the Housing Act of 1949 (42 U.S.C. 1490)).

(c) *Standards for IHA tenant/homebuyer selection criteria.* (1) The criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant, and shall not be related to those that may be imputed to a particular group or category of persons of which an applicant may be a member. The IHA's tenant/homebuyer selection criteria shall be in accordance with HUD guidelines and submitted to the HUD Area ONAP. (With respect to the Mutual Help program, see special provisions of § 950.416.)

(2) In the event of any unfavorable information regarding an applicant, the IHA shall take into consideration the time, nature, and extent of the past occurrence and reasonable probability of future favorable performance.

(d) *Admission of single persons—priority to elderly and displaced persons.* An IHA shall extend preference to elderly families (including disabled persons and handicapped persons), displaced families, and displaced persons over single persons.

(e) *Selection preference with respect to projects for elderly families.* (1) In determining priority for admission to projects for elderly families, an IHA shall give a preference to elderly families. When selecting applicants for

admission from among elderly families, an IHA shall follow its policies and procedures for applying the Federal preferences, ranking preferences, and local preferences in accordance with §§ 950.303 through 950.307.

(2) An IHA may give a preference to near elderly families in determining priority for admission to projects for elderly families when the IHA determines that there are not enough eligible elderly families to fill all the units that are currently vacant or expected to become vacant in the next 12 months. In no event may an IHA admit a near elderly family if there are eligible elderly families on the IHA's waiting list that would be willing to accept an offer for a suitable vacant unit in that project.

(3) Before electing the discretionary preference in paragraph (e)(2) of this section, an IHA shall conduct outreach to attract eligible elderly families, including, where appropriate, elderly families residing in projects not designated as being for elderly families.

(4) If an IHA elects the discretionary preference in paragraph (e)(2) of this section, the IHA shall follow its policies and procedures for applying the Federal preferences, ranking preferences, and local preferences in accordance with §§ 950.303 through 950.307 when selecting applicants for admission from among near elderly families. Near elderly families that do not qualify for a Federal preference and that are given preference for admission under this section over other nonelderly families that qualify for such a Federal preference are not subject to the 30 percent limitation on local preference admissions. If a near elderly applicant is a single person, the near elderly single person may be given a preference for admission over other single persons to projects for the elderly.

(f) *Verification of information and notification to applicants.*

(1) *Verification.* Adequate procedures shall be developed to obtain and verify information with respect to each applicant. Information relative to the acceptance or rejection of an applicant shall be documented and placed in the applicant's file.

(2) *Notification to applicants.* (i) If an IHA determines that an applicant is ineligible for admission to a project, the IHA shall promptly notify the applicant of the basis for such determination and shall provide the applicant, upon request and within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination; and

(ii) When a determination has been made that an applicant is eligible and

satisfies all requirements for admission including the tenant selection criteria, the applicant shall be notified of the approximate date of occupancy insofar as that date can be reasonably determined.

§ 950.303 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by Federal law and required to be used in the selection process. See § 950.304(a).

(2) "Ranking preferences" are preferences that may be established by the IHA to use in selecting among applicants that qualify for Federal preferences. See § 950.304(b).

(3) "Local preferences" are preferences that may be established by the IHA for use in selecting among applicants without regard to their Federal preference status.

(b) *Use of preference in selection process.* (1) *Factors other than preference.* (i) *Characteristics of the unit.* The IHA may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the IHA shall give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27). Also, in selection of a family for a unit in a project for elderly families, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See § 950.102.

(2) *Local preference admissions.* (i) If the IHA wants to use preferences to select among applicants without regard to their Federal preference status, it may adopt a preference system for this purpose. These local preferences may only be adopted after the IHA has conducted a public hearing to establish preferences that respond to local housing needs and priorities. The IHA may only use local preferences in selection for admission if the IHA has conducted the required public hearing.

(ii) "Local preference limit" means 30 percent of total annual admissions to the program. In any year, the number of families given preference in admission pursuant to a local preference over families with a Federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The IHA may not give a preference to an applicant (Federal preference, local preference, or ranking preference) if any member of the family is a person who was evicted during the

past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the IHA may give an admission preference in any of the following cases:

- (i) If the IHA determines that the evicted person has successfully completed a rehabilitation program approved by the IHA;
 - (ii) If the IHA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or
 - (iii) If the IHA determines that the evicted person no longer participates in any drug-related criminal activity.
- (c) *Informing applicants about admission preferences.* (1) The IHA shall inform all applicants about available preferences and shall give applicants an opportunity to show that they qualify for available preferences (Federal preference, ranking preference, or local preference).

(2) If the IHA determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the IHA may provide this notification to fewer than all applicants on the list at any given time. However, the IHA shall have notified a sufficient number of applicants at any given time that, on the basis of the IHA's determination of the number of applicants on the waiting list who already claim a Federal preference and the anticipated number of project admissions:

- (i) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and
- (ii) It is unlikely that, on the basis of the IHA's framework for applying the preferences and the Federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(d) *Nondiscrimination.* (1) Any selection preference used by an IHA shall be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives.

(2) The Indian Civil Rights Act may apply to operations of the IHA.

(3) In addition, the following nondiscrimination requirements may apply:

- (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;
- (ii) The Fair Housing Act (42 U.S.C. 3601-19) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101-12213) to the extent applicable.

(e) *Notice and opportunity for a meeting if preference is denied.* (1) If the IHA determines that an applicant does not qualify for a Federal preference, ranking preference, or local preference claimed by the applicant, the IHA shall promptly give the applicant written notice of the determination. The notice shall contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the IHA to review the determination. The meeting may be conducted by any person or persons designated by the IHA, who may be an officer or employee of the IHA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against in violation of requirements stated in paragraph (d) of this section.

§ 950.304 Federal preferences: general.

(a) *Definition.* A Federal preference is a preference under Federal law for selection of families that are:

- (1) Involuntarily displaced;
- (2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or
- (3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among Federal preference holders.* The IHA's admission policy may provide for the use of a ranking preference for selecting among applicants who qualify for a Federal preference.

(1) The IHA could give preference to working families. (If an IHA adopts such a preference, an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An IHA also could give preference to graduates of, as well as active participants in, educational and training

programs that are designed to prepare individuals for the job market. An IHA also could use its local preferences for the Section 8 Certificate and Voucher programs to rank Federal preference holders.

(2) The IHA may limit the number of applicants who may qualify for any ranking preference.

(3) The system may give different weight to the Federal preferences, through such means as:

- (i) Aggregating the Federal preferences (e.g., provide that two Federal preferences outweigh one);
- (ii) Giving greater weight to holders of a particular Federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a Federal preference holder who fits a particular category of a single Federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a Federal preference.* (1) *Basis of Federal preference.* The IHA shall use the following definitions of the Federal preferences (as elaborated upon in §§ 950.305, 950.306, and 950.307) unless it has received HUD approval of alternative definitions.

(i) *Displacement.* An applicant qualifies for Federal preference if: (A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing (as defined in § 950.305(a)(2)), or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the IHA.

(ii) *Substandard housing.* An applicant qualifies for a Federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a Federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a Federal preference by certifying to the

IHA that the family qualifies for Federal preference. The IHA shall accept this certification, unless the IHA verifies that the applicant is not qualified for Federal preference.

(3) *Verification of preference.* (i) Before admitting an applicant on the basis of a Federal preference, the IHA shall require the applicant to provide information needed by the IHA to verify that the applicant qualifies for a Federal preference due to the applicant's current status. The applicant's current status shall be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the time of application and selection for admission, including a change from one Federal preference category to another.

(ii) Once the IHA has verified an applicant's qualification for a Federal preference, the IHA need not require the applicant to provide information needed by the IHA to verify such qualification again unless:

(A) The IHA determines reverification is desirable because a long time has passed since verification; or

(B) The IHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a Federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit shall be considered, or the possibility of involuntary displacement resulting from domestic violence shall be evaluated.

§ 950.305 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.* (1) An applicant qualifies for a Federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the IHA.

(2) (i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to nonrental or nonresidential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant shall vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit shall be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of underoccupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.* (i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence; or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The IHA shall determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant shall certify that the person who engaged in such violence will not reside with the applicant family unless the IHA has given advance written approval. If the family is admitted, the IHA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.* (i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The IHA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.* (i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The IHA shall determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

- (i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and
- (ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

§ 950.306 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

- (1) Is dilapidated;
- (2) Does not have operable indoor plumbing;
- (3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;
- (4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;
- (5) Does not have electricity, or has inadequate or unsafe electrical service;
- (6) Does not have a safe or adequate source of heat;
- (7) Should, but does not, have a kitchen; or
- (8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.* (1) *Dilapidated unit.* A housing unit is dilapidated if:

- (i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or
- (ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect, lack of repair, or serious damage to the structure.

(2) *Homeless family.* (i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

- (A) Lacks a fixed, regular, and adequate nighttime residence; and also
- (B) Has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide

temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State or tribal law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for Federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

§ 950.307 Federal preference: rent burden.

(a) "Rent burden preference" means the Federal preference for admission of applicants that are required to pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in § 950.102.

(2) "Rent" means:

- (i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and
- (ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the IHA's programs; or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program shall be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been required to pay more than 50 percent of income for rent for less than 90 days.

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated due to the applicant's

refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act.

§ 950.308 Exemption from eligibility requirements for police officers and other security personnel.

(a) *Purpose and scope.* The purpose of this section is to permit the admission to Indian housing of police officers and other security personnel who are not otherwise eligible for such housing under any other admission requirements or procedures, under a plan submitted by an Indian housing authority (IHA) and approved by the Department, and to set forth standards and criteria for the approval of such plans. The Department's objective in granting the exemption allowed by this section is to permit long-term residence in Indian housing developments by police officers and security personnel, whose visible presence is expected to serve as a deterrent to criminal activity in and around Indian housing.

(b) *Definitions.* For the purposes of this section:

Department means the U.S. Department of Housing and Urban Development (HUD). For purposes of plan submission and approval, Department refers to the local HUD Office of Native American Programs.

Eligible Families means families that are eligible for residence in Indian housing assisted under the United States Housing Act of 1937.

Officer means a professional police officer or other professional security provider. Police officers and other security personnel are considered professional if they are employed full time, i.e., not less than 35 hours per week, by a governmental unit or a private employer and compensated expressly for providing police or security services. As used in this section, "Officer" may refer to the Officer as so defined or to the Officer and his or her family taken together, depending on the context.

Plan means the written plan submitted by an IHA to the Department, under which, if approved, the Department will exempt Officers from the normal eligibility requirements for residence in Indian housing developments and allow Officers who

are otherwise not eligible to reside in Indian housing units. An IHA may have only one plan in effect at any one time, which will govern exemptions under this section for all housing developments managed by that IHA.

(c) *Exemption from eligibility requirements*; plan submission; plan approval or disapproval.

(1) *Conditions for exemption*. The Department may exempt Officers from the eligibility requirements for admission to Indian housing, provided that:

(i) The Officers would not be eligible, under any other admission requirements or procedures, for admission to the Indian housing development without such an exemption; and

(ii) The exemption is given under a properly submitted plan that satisfies the standards and criteria set forth in § 950.308(d), and accordingly has been approved by the Department.

(2) *Plan submission*. A plan is properly submitted when it is received by the local HUD Office of Native American Programs with jurisdiction over the IHA.

(3) *Notification of plan approval or disapproval*. The Department will notify an IHA of the approval or disapproval of its plan within thirty days of its submission. Plan approval by the Department constitutes granting of the exemption for the purposes of this section.

(d) *Plan standards and criteria*. (1) *Minimum requirements*. To be approved, a plan shall satisfy the following requirements:

(i) The plan shall identify the total number of units under management by the IHA; the specific housing developments, and the number of units they contain, where the IHA intends to place Officers; and the particular units (stating number of bedrooms) within each development that would be allocated to Officers. For each unit identified, the plan shall state the amount of rent that the Officer will pay and facts and circumstances (such as the rent that would ordinarily be charged for the unit, the IHA's annual maintenance cost for the unit, the degree of difficulty in attracting Officers to reside in the unit, the extent of the crime problem in the development, and the anticipated benefits of the Officer's presence) that demonstrate the reasonableness of that amount, as required under § 950.308(e)(i).

(ii) The plan shall identify specifically the benefits to the community and to the IHA that will result from the presence of Officers in each affected development.

(iii) The plan shall describe the existing physical and social conditions in and around each affected development, providing specific evidence of criminal activity (such as frequency of telephone calls to local police, number of arrests and types of offenses involved, and data on drug abuse in the community) in order to permit the Department to make an informed assessment of the level of need for increased security.

(iv) The plan shall afford the Department a reasonable basis, which necessarily includes the certifications required under § 950.308(d)(2), for determining that the use by Officers of the identified dwelling units will:

(A) Increase security for other Indian housing residents;

(B) Result in a limited loss of income to the IHA; and

(C) Not result in a significant reduction of units available for residence by Eligible Families.

(2) *Certifications by IHA*. Only upon making the determination described in § 950.308(d)(1)(iv) will the Department approve a plan. Further, the Department will not make this determination unless the plan contains a written statement, signed by an authorized officer or other agent of the IHA, certifying that:

(i) The dwelling units proposed to be allocated to Officers are situated so as to place the Officers in close physical proximity to other residents;

(ii) No resident families will have to be transferred to other dwelling units in order to make available the units proposed to be allocated to Officers;

(iii) The dwelling units proposed to be allocated to Officers will be rented under a lease that contains the terms described in § 950.308(e); and

(iv) The number of dwelling units proposed to be allocated to Officers under the plan does not exceed the limits set forth in § 950.308(d)(3), or, in the alternative, any units so allocated in excess of the applicable maximum number are vacant units for which there are no Eligible Families. This certification on the part of the IHA satisfies the requirements of §§ 950.308(d)(1)(iv)(B) and (C).

(3) *Unit allocation table*. For purposes of the certification required by § 950.308(d)(2), the following table sets forth the maximum number of units to be allocated to Officers as a function of the total number of units under management by the IHA:

Total units under management	Units to be allocated
500-999	5

UNIT ALLOCATION TABLE—Continued

Total units under management	Units to be allocated
1000-4999	10
5000-9999	15
10,000 +	20

The maximum number of units to be allocated by IHAs with less than 500 units under management will be determined by the Office of Native American Programs on a case by case basis.

(Approved by the Office of Management and Budget under OMB control number 2577-0185.)

(e) *Special rent requirements and other terms and conditions*. The IHA shall lease units to Officers under a lease agreement, which shall be submitted as a part of the plan, containing terms that provide as follows:

(1) *Reasonable rent*. The lease shall provide for a reasonable rent, which may be a flat amount not related to the Officer's income. The IHA should attempt to establish a rent that will provide an incentive to Officers to reside in the units but that is also consistent with the limited loss of income requirement of § 950.308(d)(1)(iv)(B). As required in § 950.308(d)(1)(i), the plan shall state facts and circumstances (such as the rent that would ordinarily be charged for the unit, the IHA's annual maintenance cost for the unit, the degree of difficulty in attracting Officers to reside in the unit, the extent of the crime problem in the development, and the anticipated benefits of the Officer's presence) that demonstrate the reasonableness of the rent amount.

(2) *Responsibility for damage and overall condition*. The Officer shall be responsible for physical damage to the interior of the leased unit, hallway, and entrance, if any, and exterior area bordering the unit. The lease also shall require the Officer to maintain the overall condition of the leased unit, including control of litter in the area of the development immediately around the unit.

(3) *Responsibility for normal facility management*. The lease shall impose on the IHA responsibility for routine facility management relating to the leased unit, including ongoing maintenance and repair of equipment, trash collection, and similar areas of responsibility.

(4) *Continued employment*. The lease shall provide that the Officer's right of occupancy is dependent on the continuation of employment as an

Officer. The lease also shall provide that the Officer will move out of the leased unit within a reasonably prompt time, to be established by the lease, after termination of employment as an Officer.

(5) *Prohibition on subletting.* The lease shall prohibit the Officer from subletting the unit, and provide that the unit shall be the Officer's primary residence.

(f) *Applicability of the annual contributions contract; effect on the performance funding system.* (1) *Annual contributions contract.* Except to the extent that an exemption from eligibility requirements is provided under § 950.308(c), Indian housing units occupied by Officers in accordance with a plan submitted and approved under this section will be subject to the terms and conditions of the annual contributions contract (ACC) between the IHA and HUD. This section does not override any of the terms and conditions of the ACC except insofar as they are inconsistent with the provisions of this section.

(2) *Performance Funding System.* For purposes of the operating subsidy under the Performance Funding System (PFS) described in subpart J of this part, dwelling units allocated to Officers in accordance with this section are excluded from the total unit months available, as defined in § 950.102. Also for purposes of the operating subsidy under the PFS, the full amount of any rent paid by Officers in accordance with this section is included in other income, as defined in § 950.102. IHAs may receive operating subsidy for one unit per housing development to promote economic self-sufficiency services or anti-drug programs, including housing police officers and security personnel. An IHA may request consideration of such units in its calculation of operating subsidy eligibility through the appropriate local HUD Office of Native American Programs.

§ 950.310 Restrictions on assistance to noncitizens.

(a) *Requirements concerning documents.* For any notice or document (decision, declaration, consent form, etc.) that this section requires an IHA to provide to an individual, or requires that the IHA obtain the signature of the individual, the IHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

(b) *Restrictions on assistance.* Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens;* or
 (2) *Noncitizens* who have eligible immigration status in one of the following categories:
 (i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) [immigrants]. (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), [special agricultural worker], who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) [refugee status]; pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) [asylum status]; or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [parole status];

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) [threat to life or freedom]; or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) [amnesty granted under INA 245A].

(c) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined

to have eligible status, as described in paragraph (b) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in paragraph (r) of this section. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in paragraph (r) of this section.

(d) *Exemption of certain homebuyers from restrictions of this section.* A homebuyer who executed a Homeownership Opportunity Agreement under the Turnkey III program or who executed a Mutual Help and Occupancy Agreement under the Mutual Help Homeownership program before June 19, 1995 is *not* subject to this citizenship or eligible immigration status requirement for continued participation in the program.

(e) *Submission of evidence of citizenship or eligible immigration status.*

(1) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the IHA of the documents described in paragraph (e)(2) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the members may exercise the election not to contend to have eligible immigration status as provided in paragraph (f) of this section, and the provisions of paragraph (r) of this section shall apply.

(2) *Evidence of citizenship or eligible immigration status.* Each family, regardless of age, must submit the following evidence to the IHA:

(i) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(ii) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(A) A signed declaration of eligible immigration status; and

(B) Proof of age document.

(iii) For all other noncitizens, the evidence consists of:

(A) A signed declaration of eligible immigration status;

(B) The INS documents listed in paragraph (k)(2) of this section; and

(C) A signed verification consent form.

(3) *Declaration.* For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the IHA a written

declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(4) *Verification consent form.* (i) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(A) For each adult, the form must be signed by the adult;

(B) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(ii) *Notice of release of evidence by IHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the IHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(A) HUD as required by HUD; and

(B) The INS for purposes of verification of the immigration status of the individual.

(iii) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(f) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under paragraphs (r) or (s) of this section despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to the IHA, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(g) *Notification of requirements of Section 214.* (1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible

immigration status as provided by paragraph (f) of this section, shall be given by the IHA as follows:

(i) *Applicant's notice.* The notification described in paragraph (g)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995 shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (g)(1) of this section shall be given to each at the time of, and together with, the IHA's notice of the first regular reexamination after that date, but not later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (h) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see paragraph (n) of this section concerning INS appeal, and paragraph (o) of this section concerning IHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of paragraph (r) of this section.

(h) *When evidence of eligible status is required to be submitted.* The IHA shall require evidence of eligible status to be submitted at the times specified in paragraph (h) of this section subject to any extension granted in accordance with paragraph (i) of this section.

(1) *Applicants.* For applicants, the IHA must ensure that evidence of eligible status is submitted not later than the date the IHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see paragraph (l) of this section).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a

covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the IHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(i) *Extensions of time to submit evidence of eligible status.* (1) *When extension must be granted.* The IHA shall extend the time, provided in paragraph (h) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under paragraph (e)(3) of this section certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The IHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The IHA's decision to grant or deny an extension as provided in paragraph (i)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(j) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required

evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (i) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the IHA shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance, respectively with the provisions of paragraph (m) of this section or paragraph (r) of this section.

(k) *Documents of eligible immigration status.* (1) *General.* An IHA shall request and review original documents of eligible immigration status. The IHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(2) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with paragraph (l) of this section:

(i) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(ii) Form I-94, Arrival-Departure Record, with one of the following annotations:

(A) "Admitted as Refugee Pursuant to Section 207";

(B) "Section 208" or "Asylum";

(C) "Section 243(h)" or "Deportation stayed by Attorney General";

(D) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(iii) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(A) A final court decision granting asylum (but only if no appeal is taken);

(B) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);

(C) A court decision granting withholding or deportation; or

(D) A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(iv) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(v) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(vi) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(vii) If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

(l) *Verification of eligible immigration status.* (1) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the IHA simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See paragraph (h) of this section.) The IHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(2) *Primary verification.* (i) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the IHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(ii) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(3) *Secondary verification.* (i) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The IHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(ii) *Secondary verification initiated by IHA.* Secondary verification is initiated by the IHA forwarding photocopies of the original INS documents listed in paragraph (k)(2) of this section (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(iii) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice

described in paragraph (m)(4) of this section, which includes notification of appeal to the INS of the INS finding on immigration status (see paragraph (m)(4)(iv) of this section).

(4) *Exemption from liability for INS verification.* The IHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

(m) *Delay, denial, or termination of assistance.* (1) *Restrictions on delay, denial, or termination of assistance.*

Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under paragraph (n) of this section has not been concluded;

(v) For a tenant, the IHA hearing process under paragraph (o) of this section has not been concluded;

(vi) Assistance is prorated in accordance with paragraph (s) of this section;

(vii) Assistance for a mixed family is continued in accordance with paragraph (r) of this section; or

(viii) Deferral of termination of assistance is granted in accordance with paragraph (r) of this section.

(2) *When delay of assistance to applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the IHA informal hearing process, if an informal hearing is requested by the family.

(3) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in paragraph (h) of this section, or by the expiration of any extension granted in accordance with paragraph (i) of this section; or

(ii) The evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal (as provided in paragraph (n) of this section) or IHA informal hearing rights (as provided in paragraph (o) of this section); or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(4) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(i) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(ii) That the family may be eligible for proration of assistance as provided in paragraph (s) of this section;

(iii) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provisions in paragraph (r) of this section;

(iv) That the family has a right to request an appeal to the INS of the results of the secondary verification of immigration status, and to submit additional documentation or a written explanation in support of the appeal, in accordance with the procedures of paragraph (n) of this section;

(v) That the family has a right to request an informal hearing with the IHA either upon completion of the INS appeal or in lieu of the INS appeal, as provided in paragraph (n) of this section;

(vi) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the IHA informal hearing process.

(n) *Appeal to the INS.* (1) *Submission of request for appeal.* Upon receipt of notification by the IHA that INS secondary verification failed to confirm eligible immigration status, the IHA shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the IHA's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the IHA with a copy of the written request for appeal and proof of mailing. For good cause shown, the IHA

shall grant the family an extension of time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G-845S is available from the local INS Office.)

(3) *Decision by INS.* (i) *When decision will be issued.* The INS will issue to the family, with a copy to the IHA, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the IHA of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the IHA receives a copy of the INS decision, the IHA shall notify the family of its right to request an informal hearing on the IHA's ineligibility determination in accordance with the procedures of paragraph (o) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(o) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision, or in lieu of request of appeal to the INS, the family may request that the IHA provide a hearing. This request must be made either within 14 days of the date the IHA mails or delivers the notice under paragraph (m)(4) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (n)(4) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The IHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the IHA are set forth in § 950.340.

(ii) For applicants, the procedures for the informal hearing before the IHA are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the IHA (including an officer or employee of the IHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the IHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the IHA and to confront and cross-examine all witnesses on whose testimony or information the IHA relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or the IHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the IHA); and

(H) *Hearing decision.* The IHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within 14 days of the date of the informal hearing. The decision shall state basis for the decision.

(p) *Judicial relief.* A decision against a family member under the INS appeal process or the IHA informal hearing process does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(q) *Retention of documents.* The IHA shall retain for a minimum of 5 years the following documents that may have been submitted to the IHA by the family or provided to the IHA as part of the INS appeal or the IHA informal hearing process:

- (1) The application for financial assistance;
- (2) The form completed by the family for income re-examination;
- (3) Photocopies of any original documents (front and back), including original INS documents;
- (4) The signed verification consent form;
- (5) The INS verification results;
- (6) The request for an INS appeal;
- (7) The final INS determination;
- (8) The request for an IHA informal hearing; and
- (9) The final hearing decision.

(r) *Preservation of mixed families and other families.* (1) *Assistance available for mixed families.* (i) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following the appeals and informal hearing procedures provided in paragraphs (n) and (o) of this section if utilized by the family, one of the following three types of assistance may be available to the family:

- (A) Continued assistance (see paragraph (r)(2) of this section);
- (B) Temporary deferral of termination of assistance (see paragraph (r)(3) of this section); or
- (C) Prorated assistance (see paragraph (s) of this section; a mixed family must be provided prorated assistance if the family so requests).

(ii) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance, as provided in paragraph (s) of this section.

(iii) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on the June 19, 1995 and who have no members with eligible immigration status, the IHA may grant the family temporary deferral of termination of assistance.

(2) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

- (i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;
- (ii) The family's head of household or spouse has eligible immigration status as described in paragraph (b)(2) of this section; and
- (iii) The family does not include any person (who does not have eligible

immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(3) *Temporary deferral of termination of assistance.* (i) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(ii) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(iii) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the IHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(iv) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the IHA must:

- (A) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the IHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; and

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period,

that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; or

(C) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(v) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the IHA shall provide, proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(vi) *Notification of decision on family preservation assistance.* An IHA shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the tenant family of any appeal rights.

(s) *Proration of assistance.* (1) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under paragraph (r)(2) of this section, or other than a family who is eligible for and requests temporary deferral of termination of assistance under paragraph (r)(3) of this section. The IHA must provide an eligible mixed family prorated assistance if the family request prorated assistance.

(2) *Method of prorating assistance.* The IHA shall prorate the family's assistance by:

(i) *Step 1.* Determining total tenant payment in accordance with § 950.325 (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(ii) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "Indian housing maximum rent" applicable to the unit or the housing authority. ("Indian housing maximum rent" shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could

qualify if all members were eligible ("family maximum subsidy").

(iii) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".

(iv) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(v) *Step 5.* The product of steps 1 through 4, as set forth in paragraph (s)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

(t) *Prohibition of assistance to noncitizen students.* (1) *General.* The provisions of this section permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (t)(2) of this section, or the family of the noncitizen student, as described in paragraph (t)(3) of this section.

(2) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(i) Has a residence in a foreign country that the person has no intention of abandoning;

(ii) Is a bona fide student qualified to pursue a full course of study; and

(iii) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(3) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (t)(1) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the

student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

(u) *Protection from liability for IHAs, State, Tribal, and local government agencies and officials.* (1) *Protection from liability for IHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against an IHA with respect to any error in its determination of eligibility for assistance based on citizenship or immigration status:

(i) If the IHA established eligibility based upon verification of eligible immigration status through the verification system described in paragraph (l) of this section;

(ii) Because the IHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with paragraphs (h) and (i) of this section;

(iii) Because the IHA was required to wait for completion of INS verification of immigration status in accordance with paragraph (l) of this section;

(iv) Because the IHA was required to wait for completion of the INS appeal process provided in accordance with paragraph (n) of this section; or

(v) Because the IHA was required to provide an informal hearing in accordance with paragraph (o) of this section.

(2) *Protection from liability for State, Tribal and local government agencies and officials.* State, Tribal, and local government agencies and officials shall not be liable for the design or implementation of the verification system described in paragraph (l) of this section and the IHA informal hearing provided under paragraph (o) of this section, so long as the implementation by the State, Tribal, or local government agency or official is in accordance with prescribed HUD rules and requirements.

§ 950.315 Initial determination, verification, and reexamination of family income and composition.

(a) *Income, family composition, and eligibility.* The IHA is responsible for determination of annual income and adjusted income, for determination of eligibility for admission and total tenant payment or homebuyer required monthly payment; and for reexamination of family income and composition at least annually for all tenants and homebuyers. The "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of initial occupancy; and

(2) In the case of a reexamination of an existing tenant or homebuyer, the effective date of any change in tenant payment or required monthly payment resulting from the reexamination.

(3) If there is no change, the effective date is the date a change would have taken place if the reexamination had resulted in a change in payment.

(b) *Verification.* As a condition of admission to, or continued occupancy of, any assisted unit, the IHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent form (including any release and consent as required under 24 CFR part 760) authorizing any depository or private source of income, or any Federal, State, or local agency, to furnish or release to the IHA and to HUD such information as the IHA or HUD determines to be necessary. The IHA also shall require the family to submit directly the documentation determined to be necessary, including any information required under 24 CFR part 750. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a family's eligibility to receive housing assistance; for determining the family's adjusted income, tenant rent, or required monthly payment; for verifying related information; or for monitoring compliance with equal opportunity requirements. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this part or an application for assistance.

(c) *Rent and homebuyer payment adjustments.* After consultation with the family and upon verification of the information, the IHA shall make appropriate adjustments in the rent or homebuyer payment amount. The tenant or homebuyer shall comply with the IHA's policy regarding required interim reporting of changes in the family's income.

(d) *Implementation of verification of citizenship or eligible immigration status.* The IHA shall follow the procedures required by § 950.310 for determining citizenship or eligible immigration status before initial occupancy, and, for tenants admitted before June 19, 1995, at the first reexamination of family income and composition after that date. Thereafter, at the annual reexaminations of family income and composition, the IHA shall

follow the requirements of § 950.310 concerning verification of the immigration status of any new family member. The family shall comply with the IHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA is informed of a change in the family income or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information, shall promptly make any adjustments appropriate in the rent or Homebuyer payment amount or take appropriate action concerning the addition of a family member who is a noncitizen with ineligible immigration status.

(e) See 24 CFR part 908 for requirements for transmission of data to HUD.

§ 950.320 Determination of rents and homebuyer payments.

(a) *Rental and Turnkey III projects.* The amount of rent required of a tenant in a rental project or the Turnkey III homebuyer payment amount for a homebuyer in a Turnkey III project for Turnkey III contracts executed after August 1, 1982, shall be equal to the total tenant payment as determined in accordance with § 950.325. For Turnkey III contracts executed on or before August 1, 1982, the Turnkey III homebuyer payment is determined in accordance with the contract. If the utility allowance exceeds the rent or required monthly payment, the IHA will pay the utility reimbursement as provided in § 950.325(b). In the case of a Turnkey III homebuyer, payment of a utility reimbursement may affect the IHA's evaluation of the Turnkey III homebuyer's homeownership potential. (See § 950.529 regarding loss of homeownership potential and § 950.523 regarding funds to cover such reimbursements.)

(b) *MH projects.* The amount of the required monthly payment for a homebuyer in an MH project is determined in accordance with subpart E of this part.

§ 950.325 Total tenant payment—Rental and Turnkey III programs.

(a) *Total tenant payment.* Total tenant payment shall be the highest of the following, rounded to the nearest dollar:

- (1) 30 percent of monthly adjusted income;
- (2) 10 percent of monthly income; or
- (3) If the family receives welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated

by such agency to meet the family's housing costs, the monthly portion of such payments that is so designated. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (a)(3) of this section shall be the amount resulting from one application of the percentage.

(b) *Utility reimbursement.* If the utility allowance exceeds the total tenant payment, the difference (the utility reimbursement) shall be due to the family. If the utility company consents, an IHA may, at its discretion, pay the utility reimbursement directly to the utility company.

§ 950.335 Rent and homebuyer payment collection policy.

Each IHA shall establish and adopt, and use its best efforts to obtain compliance with, written policies sufficient to assure the prompt payment and collection of rent and homebuyer payments. A copy of the written policies shall be posted prominently in the IHA office and shall be provided upon request. Such policies shall be in accordance with the ACC and HUD statutory and regulatory requirements.

§ 950.340 Grievance procedures and leases.

(a) *Grievance procedures.* (1) *General.* Each IHA shall adopt grievance procedures that are appropriate to local circumstances. These procedures shall comply with the Indian Civil Rights Act, if applicable, and section 6(k) of the Act, as applicable, and shall assure that tenants and homebuyers will:

- (i) Be advised of the specific grounds of any proposed adverse action by the IHA;
- (ii) Have an opportunity for a hearing before an impartial party upon timely request;
- (iii) Have a reasonable opportunity to examine any documents, records, or regulations related to the proposed action before the hearing (or trial in court);
- (iv) Be entitled to be represented by another person of their choice at any hearing;
- (v) Be entitled to ask questions of witnesses and have others make statements on their behalf; and
- (vi) Be entitled to receive a written decision by the IHA on the proposed action.

(2) *Expedited grievance procedure.* An IHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- (i) Any criminal activity that threatens the health, safety, or right to peaceful

enjoyment of the Indian housing development by other residents or employees of the IHA; or

(ii) Any drug-related criminal activity on or near the premises.

(3) *Exclusion of certain grievances.* (i) *General.* An IHA may pursue termination of tenancy or eviction without offering a grievance procedure if the termination or eviction is based on one of the grounds stated in paragraph (a)(2) of this section, so long as applicable tribal or State law requires that, before eviction, a tenant (including a homebuyer under a homeownership agreement) be given a hearing in court, and HUD has determined that the tribal or State procedures provide the basic elements of due process.

(ii) *Basic elements of due process.* The elements of due process against which the jurisdiction's procedures are measured by HUD are the following:

- (A) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
- (B) Right of the tenant to be represented by counsel;
- (C) Opportunity for the tenant to refute the evidence presented by the IHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant might have; and
- (D) A decision on the merits.

(4) *Notice to post office of certain evictions.* When an IHA evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the IHA shall notify the local post office serving that dwelling unit that the evicted individual or family is no longer residing in the dwelling unit (so that the post office will terminate delivery of mail for such persons at the unit, and that such persons will not return to the unit to pick up mail).

(5) *Notice of procedures.* A copy of the grievance procedures shall be posted prominently in the IHA office, and shall be provided to any tenant, homebuyer, or applicant upon request.

(b) *Leases.* Each IHA shall use leases that:

- (1) Do not contain unreasonable terms and conditions;
- (2) Obligate the IHA to maintain the project in a decent, safe, and sanitary condition;
- (3) Require the IHA to give adequate written notice of termination of the lease that shall not be less than—

- (i) A reasonable time, but not to exceed 30 days, when the health or safety of other tenants or IHA employees is threatened;
- (ii) Fourteen days in the case of nonpayment of rent; and

(iii) Thirty days in any other case;
 (4) Require that the IHA may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause;

(5) Provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or any drug-related criminal activity on or near the premises, engaged in by an Indian housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy. For purposes of this section, the term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); and

(6) Specify that with respect to any notice of termination of tenancy or eviction, notwithstanding any applicable tribal or State law, an Indian housing tenant shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, records, or regulations directly related to the termination or eviction.

§ 950.345 Maintenance and improvements.

(a) *General.* Each IHA shall adopt written policies to assure full performance of the respective maintenance responsibilities of the IHA and tenants. A copy of such policies shall be posted prominently in the IHA office, and shall be provided to an applicant or tenant upon entry into the program and upon request.

(b) *Provisions for rental projects.* For rental projects, the maintenance policies shall contain provisions on at least the following subjects:

(i) The responsibilities of tenants for normal care and maintenance of their dwelling units, and of the common property, if any;

(ii) Procedures for handling maintenance service requests from tenants;

(iii) Procedures for IHA inspections of dwelling units and common property;

(iv) Special arrangements, if any, for obtaining maintenance services from outside workers or contractors; and

(v) Procedures for charging tenants for damages for which they are responsible.

§ 950.346 Fire safety.

(a) *Applicability.* This section applies to all IHA-owned or leased housing, including Mutual Help and Turnkey III.

(b) *Smoke detectors.* (1) After October 30, 1992, each unit shall be equipped

with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by applicable State, local, or tribal codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors shall be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this section shall be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(3) The smoke detector for each individual unit shall be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors shall be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents shall be equipped with both audible and visual types of alarm devices.

(4) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors shall be replaced with hard-wired electric smoke detectors in the normal course of an IHA's planned CIAP or CGP program to meet the HUD Modernization Standards of applicable State, local, or tribal codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents shall be installed in accordance with the acceptability criteria in paragraph (b)(3) of this section.

(5) IHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detectors in place. If operating funds or reserves are insufficient to accomplish this, IHAs may apply for emergency CIAP funding. IHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

§ 950.360 IHA employment practices.

(a) *Indian preference.* Each IHA shall adopt written policies with respect to the IHA's own employment practices,

which shall be in compliance with its obligations under section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), and E.O. 11246 (3 CFR, 1964-65 comp., p. 339), as amended by E.O. 11375 (3 CFR, 1966-70 comp., p. 684), as applicable. A copy of these policies shall be posted in the IHA office. (Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), as amended, which prohibits discrimination in employment by making it unlawful for employers to engage in certain discriminatory practices, excludes Indian tribes from the nondiscrimination requirements of Title VII. See also § 950.175(c).)

(b) *Wage rates.* See § 950.120 (c) and (d) with respect to the wage rates applicable to IHA employees.

Subpart E—Mutual Help Homeownership Opportunity Program

§ 950.401 Scope and applicability.

(a) *Scope.* This subpart sets forth the requirements for the Mutual Help (MH) Homeownership Opportunity Program. For any matter not covered in this subpart, see other subparts contained in this part. Projects developed under the Self-Help development method shall comply with the requirements of subparts E and F of this part.

(b) *Applicability.* The provisions of this subpart are applicable to all MH projects placed under ACC on or after March 9, 1976, and to projects converted in accordance with §§ 950.455 or 950.503.

§ 950.416 Selection of MH homebuyers.

(a) *Admission policies.* (1) *Low-income families.* An IHA's written admission policies for the MH program, adopted in accordance with § 950.301, shall limit admission to low-income families.

(i) An IHA may provide for admission of applicants whose family income exceeds the levels established for low-income families if the IHA demonstrates to HUD's satisfaction that there is a need to house such families that cannot reasonably be met except under this program.

(ii) The number of dwelling units in any project assisted under the MH program that may be occupied by or reserved for families whose incomes exceed the levels established for low-income families (i.e., applicants admitted under paragraph (a)(1)(i) of this section) may not exceed whichever of the following is higher:

(A) Ten percent of the dwelling units in the project; or

(B) Five dwelling units.

(2) An IHA may establish criteria in its Admissions and Occupancy Policy

for admission of a non-Indian applicant in circumstances where the IHA determines the presence of the family is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met except under this program.

(3) *Different standards for MH program.* The IHA's admission policies for MH projects should be different from those for its rental or Turnkey III projects. The policies for the MH program should provide standards for determining a homebuyer's:

(i) Ability to provide maintenance for the unit;

(ii) Potential for maintaining at least the current income level;

(iii) Successor to a unit at the time of an "event" ("event" should also be defined by the IHA in its policy; see § 950.449(a)); and

(iv) Initial purchase price and the purchase price for a subsequent homebuyer.

(b) *Ability to meet homebuyer obligations.* A family shall not be selected for MH housing unless, in addition to meeting the income limits and other requirements for admission (see § 950.301), the family is able and willing to meet all obligations of an Mutual Help and Occupancy (MHO) Agreement, including the obligations to perform or provide the required maintenance, to provide the required MH Contribution, and to pay for utilities and the administration charge.

(c) *MH waiting list.* (1) Families who wish to be considered for MH housing shall apply specifically for such housing. A family on any other IHA waiting list, or a tenant in a rental project of the IHA, shall also submit an application in order to be considered for an MH project; and

(2) The IHA shall maintain a waiting list, separate from any other IHA waiting list, of families that have applied for MH housing and meet the admission requirements. The IHA shall maintain an MH waiting list in accordance with requirements prescribed by HUD and shall make selections in the order in which they appear on the list.

(d) *Making the selections.* Within 30 days after HUD approval of the application for a project, the IHA shall proceed with preliminary selection of as many homebuyers as there are homes in the project. Preliminary selection of homebuyers shall be made from the MH waiting list in accordance with the date of application; qualification for a Federal preferences, ranking preferences, and local preferences, in accordance with §§ 950.303 through 950.307; other pertinent factors under

the IHA's admissions policies established in accordance with § 950.301; and 24 CFR part 750. Final selection of a homebuyer will be made only after the site for that homebuyer has received final site approval, and the form of MH contribution has been determined.

(e) *Principal residence.* A condition for selection as a homebuyer is that the family agrees to use the home as their principal residence during the term of the MHO Agreement. Ownership or use of an additional residence that is decent, safe, and sanitary at the time of occupancy or acquisition during occupancy would disqualify a family from the MH program. However, there are two situations that do not violate the principal residence requirement. First, ownership or use of a secondary home that is necessary for the family's livelihood or for cultural preservation, as solely determined by the IHA and described in the IHA's admission and occupancy policy, is acceptable. Second, a family's temporary absence from its MH home, and related subleasing of it, is acceptable if it is done for reasons and time periods prescribed in the IHA's admission and occupancy policy.

(f) *Notification of applicants.* The IHA shall give families prompt written notice of selection for a MH home.

§ 950.419 MH contribution.

(a) *Amount and form of contribution.* As a condition of occupancy, the MH homebuyer will be required to provide an MH contribution. Contributions other than labor may be made by an Indian tribe on behalf of a family.

(1) The value of the contribution shall not be less than \$1500.

(2) The MH contribution may consist of land, labor, cash, materials, equipment, or any combination thereof. Land contributed to satisfy this requirement shall be owned in fee simple by the homebuyer or shall be assigned or allotted to the homebuyer for his or her use before application for an MH unit. Contributions of land donated by another person on behalf of the homebuyer will satisfy the requirement for an MH contribution. A homebuyer may provide cash to satisfy the MH contribution requirement where the cash is used for the purchase of land, labor, materials, or equipment for the homebuyer's home.

(3) The amount of credit for an MH contribution in the case of land, labor, materials, or equipment shall be based upon the market value at the time of the contribution. In the case of labor, materials, or equipment, market value shall be determined by the contractor

and the IHA. In the case of land, market value shall be determined by the IHA. (See § 950.245). The use of labor, materials, or equipment as MH contributions shall be reflected by a reduction in the Total Contract Price stated in the Construction Contract.

(b) *Execution of Agreements.* For projects other than Self-Help development projects, MHO Agreements should be signed for all units before execution of the construction contract for the project. Land leases for trust land shall be signed and approved by BIA before construction start.

(c) *Total contribution to be furnished before occupancy.* The homebuyer cannot occupy the unit until the entire MH contribution is provided to the IHA. If the homebuyer is unable or unwilling to provide the MH contribution before occupancy of the project, the MHO Agreement for the homebuyer shall be terminated and the IHA shall select a substitute homebuyer from its waiting list.

(d) *MH contribution in event of substitution of homebuyer.* If an MHO Agreement is terminated and a substitute homebuyer is selected, the amount of MH contribution to be provided by the substitute homebuyer shall be in accordance with paragraph (a) of this section. The substitute homebuyer may not occupy the unit until the complete MH contribution has been made.

(e) *Disposition of contribution.* If an MHO Agreement is terminated by the IHA or the homebuyer before the date of occupancy, the homebuyer may receive reimbursement of the value of the MH contribution made plus other amounts contributed by the homebuyer, in accordance with § 950.446.

§ 950.422 Commencement of occupancy.

(a) *Notice.* (1) Upon acceptance of the home by the IHA from the contractor, the IHA shall determine whether the homebuyer has met all requirements for occupancy, including satisfaction in full of the MH contribution, and fulfillment of mandatory homebuyer counseling requirements. (See § 950.453.) The IHA shall notify the homebuyer in writing that the home is available for occupancy as of a date specified in the notice.

(2) If the IHA determines that the homebuyer has not met any of the other conditions for occupancy by the date of occupancy, the IHA shall send the homebuyer a notice in writing. This notice shall specify the date by which all requirements shall be satisfied and shall advise the homebuyer that the MHO Agreement will be terminated and a substitute homebuyer selected for the

unit if the requirements are not satisfied.

(b) *Credits to MH accounts and reserves.* Promptly after the date of occupancy, the IHA shall credit the amount of the MH contribution to the homebuyer's accounts and reserves in accordance with § 950.437 and shall give the homebuyer a statement of the amounts so credited.

§ 950.425 Inspections, responsibility for items covered by warranty.

(a) *Inspection before move-in and identification of warranties.* (1) To establish a record of the condition of the home on the date of occupancy, the IHA shall include the homebuyer in all inspection activities (See § 950.270).

(2) Within 30 days of commencement of occupancy of each home, the IHA shall furnish the homebuyer with a list of applicable contractors', manufacturers', and suppliers' warranties, indicating the items covered and the periods of the warranties, and stating the homebuyer's responsibility for notifying the IHA of any deficiencies that would be covered under the warranties.

(b) *Inspections during contractors' warranty periods, responsibility for items covered by contractors', manufacturers', or suppliers' warranties.* It is the responsibility of the homebuyer during the period of the applicable warranties, to promptly inform the IHA in writing of any deficiencies arising during the warranty period (including manufacturers' and suppliers' warranties) so that the IHA may enforce any rights under the applicable warranties. If a homebuyer fails to furnish such a written report in time, and the IHA is subsequently unable to obtain redress under the warranty, correction of the deficiency shall be the responsibility of the homebuyer.

(c) *Inspection upon termination of Agreement.* If the MHO Agreement is terminated for any reason after commencement of occupancy, the IHA shall inspect the home after notifying the homebuyer of the time for inspection and shall give the homebuyer a written statement of the cost of any maintenance work required to put the home in satisfactory condition for the next occupant (see § 950.446).

(d) *Homebuyer permission for inspections; participation in inspections.* The homebuyer shall permit the IHA to inspect the home at reasonable hours and intervals during the period of the MHO Agreement in accordance with rules established by the IHA. The homebuyer shall be notified of the opportunity to participate in the

inspection made in accordance with this section.

§ 950.426 Homebuyer payments before March 9, 1976.

The amount of the required monthly payment for a homebuyer in an MH project placed under ACC before March 9, 1976 is determined in accordance with the MHO Agreement and provisions of §§ 950.315 and 950.102 concerning income. Utility reimbursements are not applicable to the Mutual Help program.

§ 950.427 Homebuyer payments for projects under ACC on or after March 9, 1976.

(a) *Establishment of payment.* (1) Each homebuyer shall be required to make a monthly payment (required monthly payment) as determined by the IHA. The minimum required monthly payment shall equal the administration charge.

(2) Subject to the requirement for payment of at least the administration charge, each homebuyer shall pay an amount of required monthly payment computed by:

(i) Multiplying adjusted income (determined in accordance with § 950.102) by a specified percentage. The specific percentage shall be no less than 15 percent and no more than 30 percent, as determined by the IHA; and

(ii) Subtracting from that amount the utility allowance determined for the unit.

(3) The IHA shall provide that the required monthly payment may not be more than a maximum amount. The maximum shall not be less than the sum of:

(i) The administration charge; and

(ii) The monthly debt service amount shown on the homebuyer's purchase price schedule.

(4) If the required monthly payment exceeds the administration charge, the amount of the excess shall be credited to the homebuyer's monthly equity payments account (see § 950.437(b)).

(b) *Administration charge.* The administration charge may be based on differences in expenses attributable to different sizes or types of units.

(c) *Adjustments in the amount of the required monthly payment.* (1) After the initial determination of a homebuyer's required monthly payment, the IHA shall increase or decrease the amount of such payment in accordance with HUD regulations to reflect changes in adjusted income (pursuant to a reexamination by the IHA in accordance with § 950.315), adjustments in the administration charge, or in any of the other factors affecting computation of

the homebuyer's required monthly payment.

(2) In order to accommodate wide fluctuations in required monthly payments due to seasonal conditions, an IHA may agree with the homebuyer for payments to be made in accordance with a seasonally adjusted schedule that assures full payment of the required amount for each year.

(d) *Homebuyer payment collection policy.* Each IHA shall establish and adopt written policies to obtain prompt payment and collection of required homebuyer payments. A copy of the policies shall be posted prominently in the IHA office, and shall be provided to a homebuyer upon request.

§ 950.428 Maintenance, utilities, and use of home.

(a) *General.* Each IHA shall establish and adopt written policies to assure full performance of the respective maintenance responsibilities of the IHA and homebuyers. A copy of such written policies shall be posted prominently in the IHA office, and shall be provided to an applicant or homebuyer upon entry into the program and upon request.

(b) *Provisions for MH projects.* The written maintenance policies shall contain provisions on at least the following subjects:

(1) The responsibilities of homebuyers for maintenance and care of their dwelling units and common property;

(2) Procedures for providing advice and technical assistance to homebuyers to enable them to meet their maintenance responsibilities;

(3) Procedures for IHA inspections of homes and common property;

(4) Procedures for IHA performance of homebuyer maintenance responsibilities (if homebuyers fail to satisfy such responsibilities), including procedures for charging the homebuyer's proper account for the cost thereof;

(5) Special arrangements, if any, for obtaining maintenance services from outside workers or contractors; and

(6) Procedures for charging homebuyers for damage for which they are responsible.

(c) *IHA responsibility in MH projects.* The IHA shall enforce the provisions of a MHO Agreement for homebuyer maintenance of the home. Failure of a homebuyer to meet the obligations for maintenance shall not relieve the IHA of responsibility in this respect. The IHA shall conduct a complete interior and exterior examination of each home on a schedule developed by the IHA that ensures that the home is maintained in decent, safe, and sanitary condition and shall furnish a copy of the inspection report to the homebuyer. The IHA shall

take appropriate action, as needed, to remedy conditions shown by the inspection, including steps to assure performance of the homebuyer's obligations under the homebuyer's Agreement.

(d) *Homebuyer responsibility in MH program.* (1) The homebuyer shall be responsible for routine and nonroutine maintenance of the home, including all repairs and replacements (including those resulting from damage from any cause). The IHA shall not be obligated to pay for or provide any maintenance of the home, except as determined necessary in paragraph (d)(2) of this section.

(2) *Homebuyer's failure to perform maintenance.* (i) Failure of the homebuyer to perform maintenance obligations constitutes a breach of the MHO Agreement and grounds for its termination.

(ii) If the IHA determines that the condition of the property creates a hazard to the life, health, or safety of the occupants, or if there is a risk of damage to the property if the condition is not corrected, the corrective work shall be done promptly by the IHA with such use of the homebuyer's accounts as the IHA may determine to be necessary, or by the homebuyer with a charge of the cost to the homebuyer's accounts in accordance with § 950.437.

(iii) Any maintenance work performed by the IHA shall be accounted for through a work order stating the nature of and charge for the work. The IHA shall give the homebuyer copies of all work orders for the home.

(e) *Homebuyer's responsibility for utilities.* The homebuyer is responsible for the cost of furnishing utilities. The IHA shall have no obligation for the utilities. If the IHA determines that the homebuyer is unable to pay for the utilities for the home the IHA may pay for the utilities on behalf of the homebuyer and charge the homebuyer's accounts for the costs. When the homebuyer's accounts have been exhausted, the IHA shall pursue termination of the homebuyer Agreement and may offer the homebuyer a transfer into the rental program if a unit is available.

(f) *Obligations with respect to home and other persons and property.* (1) The homebuyer shall agree to abide by all provisions of the MHO Agreement concerning homebuyer responsibilities, occupancy, and use of the home.

(2) The homebuyer may request IHA permission to operate a small business in the unit. An IHA may determine when permission will be given.

(g) *Structural changes.* (1) A homebuyer shall not make any

structural changes in or additions to the home unless the IHA has determined that such changes are acceptable.

(2) If the homebuyer is in compliance with the terms of the MHO Agreement, the IHA may agree to allow the homebuyer to use the funds in the MEPA for betterments and additions to the MH home. The IHA shall determine whether the homebuyer will be required to replenish the MEPA or if the funds are to be loaned to the homebuyer at an interest rate determined by the IHA. The homebuyer cannot use MEPA funds for luxury items, as determined by the IHA.

§ 950.431 Operating reserve.

The IHA shall maintain an operating reserve in an amount sufficient for working capital purposes, estimated future nonroutine maintenance requirements for IHA-owned administrative facilities and common property, payment of advance premiums for insurance, unanticipated project requirements, and other eligible uses as determined by the IHA. The amount of a contribution to this reserve shall be determined by the IHA and included in the administration charge. The amount of this contribution shall be increased or decreased annually to reflect the needs of the IHA for working capital and for reserves for anticipated future expenditures, and it shall be included in the operating budget.

§ 950.432 Operating budget submission and approval.

(a) *Required documentation.* (1) An IHA shall prepare an operating budget each fiscal year in a manner prescribed by HUD. The board of commissioners shall review and approve the budget by resolution. Each fiscal year, the IHA shall submit to the Area ONAP the approved board resolution and any necessary supporting documentation for operating subsidy as prescribed by HUD.

(2) The Area ONAP may direct an IHA to submit a complete operating budget if the IHA has been issued a corrective action order with respect to financial management. If such action is necessary, the Area ONAP will notify the IHA prior to the beginning of the fiscal year.

(b) *HUD operating budget review.* (1) A detailed review will be performed on IHA operating budgets that are subject to HUD review and approval. If the HUD Area ONAP finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Area ONAP may at any time require the submission by the IHA of further information regarding

an operating budget or operating budget revision.

(2) When the IHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing, HUD will notify the IHA that it no longer is required to submit an operating budget to HUD for review and approval.

§ 950.434 Operating subsidy.

(a) *Scope.* This section authorizes the use of operating subsidy for Mutual Help projects and establishes eligible costs.

(b) *Eligible costs.* Operating subsidy may be paid to cover proposed expenditures approved by the Area ONAP for the following purposes:

(1) The reasonable cost of an annual independent audit;

(2) Administration charges for vacant units when the IHA submits evidence to the Area ONAP's satisfaction that it is making every reasonable effort to fill the vacancies;

(3) Collection losses due to payment delinquencies on the part of homebuyer families whose MHO Agreements have been terminated and who have vacated the home, and the cost of any maintenance (including repairs and replacements) necessary to put the vacant home in a suitable condition for a subsequent homebuyer family. Operating subsidy may be made available for these purposes only after the IHA has previously used all available homebuyer credits;

(4) An amount for the cost of a HUD-approved counseling program;

(5) An amount for training and related travel of IHA staff and Commissioners;

(6) The costs of a HUD-approved professional management contract; and

(7) Operating costs resulting from other unusual circumstances justifying payment of operating subsidy, if approved by HUD.

(8) Subject to appropriations, and in accordance with the provisions of subpart O of this part and procedures determined by HUD, each IHA with a duly elected resident organization (RO) shall receive \$25 per unit per year for resident participation activities. Of this amount, \$15 per unit per year shall fund resident participation activities of the RO. Ten dollars per unit per year shall fund IHA costs incurred in carrying out resident participation activities.

(c) *Ineligible costs.* No operating subsidy shall be paid for utilities, maintenance, or other items for which the homebuyer is responsible except, as necessary, to put a vacant home in condition for a subsequent family as

provided in paragraph (b)(2) of this section.

§ 950.437 Homebuyer reserves and accounts.

(a) *Refundable and nonrefundable MH reserves.* The IHA shall establish separate refundable and nonrefundable reserves for each homebuyer effective on the date of occupancy.

(1) The refundable MH reserve represents a homebuyer's interest in funds that may be used to purchase the home at the option of the homebuyer. The IHA shall credit this account with the amount of the homebuyer's cash MH contribution or the value of the labor, materials, or equipment MH contribution.

(2) The nonrefundable MH reserve also represents a homebuyer's interest in funds that may be used to purchase the home at the option of the homebuyer. The IHA shall credit this account with the amount of the homebuyer's share of any credits for land contributed to the project and the homebuyer's share of any credit for non-land contributions by a terminated homebuyer.

(b) *Equity accounts.* (1) Monthly equity payments account (MEPA). The IHA shall maintain a separate MEPA for each homebuyer. The IHA shall credit this account with the amount by which each required monthly payment exceeds the administration charge. Should the homebuyer fail to pay the required monthly payment, the IHA may elect to reduce the MEPA by the amount owed each month towards the administration charge, until the MEPA has been fully expended. The MEPA balance shall be comprised of an amount backed by cash actually received in order for any such reduction to be made.

(2) *Investment of equity funds.* (i) Funds held by the IHA in the equity accounts of all the homebuyers in the project shall be invested in HUD-approved investments. Income earned on the investments of such funds shall periodically, but at least annually, be prorated and credited to each homebuyer's equity account in proportion to the amount in each such account on the date of proration. If HUD determines that accounts are not properly managed it may ultimately remove responsibility of the IHA for managing such accounts to a HUD-approved escrow agent.

(ii) Notwithstanding other provisions of this subpart and subject to Area ONAP approval, an IHA may use a portion of the homebuyer's equity account for low-income housing purposes provided that a reserve of homebuyer's MEPA is maintained. The

reserve shall be at a percentage established by the IHA and approved by the Area ONAP. (Interest shall continue to be credited to the homebuyer's account based on the MEPA balance and the rate of interest that would have been earned if the funds were invested.)

(c) *Charges for maintenance.* (1) If the IHA has maintenance work done, the cost thereof shall be charged to the homebuyer's MEPA.

(d) *Use of reserves and accounts; nonassignability.* The homebuyer shall have no right to receive or use the funds in any reserve or account except as provided in the MHO Agreement, and the homebuyer shall not, without approval of the IHA and HUD, assign, mortgage, or pledge any rights in the MHO Agreement or to any reserve or account.

§ 950.440 Purchase of home.

(a) *General.* The IHA provides the family an opportunity to purchase the dwelling under the MHO Agreement (a lease with an option to purchase), under which the purchase price is amortized over the period of occupancy, in accordance with a purchase price schedule. If a homebuyer wants to acquire ownership in a shorter period than that shown on the purchase price schedule, the homebuyer may exercise his or her option to purchase the home on or after the date of occupancy, but only if the homebuyer has met all obligations under the MHO Agreement. The homebuyer may obtain financing, from the IHA or an outside source, at any time to cover the remaining purchase price.

(b) *Purchase price and purchase price schedule.* (1) *Initial purchase price.* The initial purchase price of a home for a homebuyer shall be determined by the IHA.

(2) *Purchase price schedule.* Promptly after execution of the construction contract, the IHA shall furnish to the homebuyer a statement of the initial purchase price of the home, and a purchase price schedule that will apply, based on amortizing the balance (purchase price less the MH contribution) over a period, not less than 15 years or more than 25 as determined by the IHA, at an interest rate determined by the IHA. The IHA may choose to forego charging interest and calculate the payment with an interest rate of zero.

(c) *Purchase price schedule for subsequent homebuyer.* (1) *Initial purchase price.* When a subsequent homebuyer executes the MHO Agreement, the purchase price for the subsequent homebuyer shall be determined by the IHA.

(2) *Purchase price schedule.* Each subsequent homebuyer shall be provided with a purchase price schedule, showing the monthly declining purchase price over a period, not less than 15 years or more than 25 years as determined by the IHA, at an interest rate determined by the IHA.

(d) [Reserved].

(e) *Conveyance of home.* (1) *Purchase procedure.* In accordance with the MHO Agreement, the IHA shall convey title to the homebuyer when the balance of the purchase price can be covered from the amount in the equity account. The homebuyer may supplement the amount in the equity account with reserves or any other funds of the homebuyer. Notwithstanding the requirement for prompt conveyance, an IHA may delay conveyance long enough for modernization of a paid-off unit in accordance with its Comprehensive Plan or CIAP application. Until title is conveyed, the homebuyer is responsible to make monthly payments to cover the monthly operating expenses for the unit.

(2) *Amounts to be paid.* The purchase price shall be the amount shown on the purchase price schedule for the month in which the settlement date falls.

(3) *Settlement costs.* Settlement costs shall be paid by the homebuyer, who may use equity accounts or reserves available for the purchase in accordance with paragraph (e)(4) of this section.

(4) *Disposition of homebuyer accounts and reserves.* When the homebuyer purchases the home, the net credit balances in the homebuyer's equity account (as described in § 950.437), supplemented by the nonrefundable MH reserve and then the refundable MH reserve, shall be applied in the following order:

(i) For the initial payment for fire and extended coverage insurance on the home after conveyance, if the IHA finances purchase of the home in accordance with § 950.443;

(ii) For settlement costs, if the homebuyer so directs;

(iii) For the purchase price; and

(iv) The balance, if any, for refund to the homebuyer.

(5) *Settlement.* A home shall not be conveyed until the homebuyer has met all the obligations under the MHO Agreement, except as provided in § 950.440(e)(8). The settlement date shall be mutually agreed upon by the parties. On the settlement date, the homebuyer shall receive the documents necessary to convey to the homebuyer the IHA's right, title, and interest in the home, subject to any applicable restrictions or covenants as expressed in such documents. The required documents shall be approved by the

attorneys representing the IHA, and by the homebuyer or the homebuyer's attorney.

(6) *IHA investment and use of purchase price payments.* After conveyance, all homebuyer funds held or received by the IHA from the sale of a unit in a project financed with grants shall be held separate from other project funds, and shall be used for purposes related to low-income housing use. Homebuyer funds held or received by the IHA from the sale to a homebuyer of a unit in a project financed by loans are subject to loan forgiveness.

(7) *Removal of home from MH program.* When a home has been conveyed to the homebuyer, whether or not with IHA financing, the unit is removed from the IHA's MH project under its ACC with HUD.

(8) *Homebuyers with delinquencies.* (i) If a homebuyer has a delinquency at the end of the amortization period, the unit is no longer available for assistance from HUD.

(ii) Notwithstanding the above requirements, an IHA may complete emergency work and modernization work required by statute or regulation on a unit that is paid off but not conveyed, during the term of the repayment schedule.

(iii) Upon repayment of the total delinquency, the IHA may, in accordance with § 950.602(b)(2), complete nonemergency modernization work on a unit prior to conveyance.

§ 950.443 IHA homeownership financing.

The IHA may offer a form of homeownership financing, similar to a purchase money mortgage. The IHA shall set standards for determining eligibility and developing promissory notes, mortgages, and other financial instruments necessary to carry out the transaction.

§ 950.446 Termination of MHO Agreement.

(a) *Termination upon breach.* (1) In the event the homebuyer fails to comply with any of the obligations under the MHO Agreement, the IHA may terminate the MHO Agreement by written notice to the homebuyer, enforced by eviction procedures applicable to landlord-tenant relationships.

(2) Misrepresentation or withholding of information when applying for admission or in connection with any subsequent reexamination of income and family composition constitutes a breach of the homebuyer's obligations under the MHO Agreement. "Termination," as used in the MHO Agreement, does not include acquisition of ownership by the homebuyer.

(b) *Notice of termination of MHO Agreement by the IHA, right of homebuyer to respond.* Termination of the MHO Agreement by the IHA for any reason shall be by written notice of termination. Such notice shall be in compliance with the terms of the MHO Agreement and, in all cases, shall afford a fair and reasonable opportunity to have the homebuyer's response heard and considered by the IHA. Such procedures shall comply with the Indian Civil Rights Act, if applicable, and shall incorporate all the steps and provisions needed to comply with State, local, or tribal law, with the least possible delay. (See § 950.340.)

(c) *Termination of MHO Agreement by homebuyer.* The homebuyer may terminate the MHO Agreement by giving the IHA written notice in accordance with the Agreement. If the homebuyer vacates the home without notice to the IHA, the homebuyer shall remain subject to the obligations of the MHO Agreement, including the obligation to make monthly payments, until the IHA terminates the MHO Agreement in writing. Notice of the termination shall be communicated by the IHA to the homebuyer to the extent feasible and the termination shall be effective on the date stated in the notice.

(d) *Disposition of funds upon termination of the MHO Agreement.* If the MHO Agreement is terminated, the balances in the homebuyer accounts and reserves shall be disposed of as follows:

(1) The MEPA shall be charged with:

(i) Any maintenance and replacement cost incurred by the IHA to prepare the home for the next occupant;

(ii) Any amounts the homebuyer owes the IHA, including required monthly payments;

(iii) The required monthly payment for the period the home is vacant, not to exceed 60 days from the date of receipt of the notice of termination, or if the homebuyer vacates the home without notice to the IHA, for the period ending with the effective date of termination by the IHA; and

(iv) The cost of securing a vacant unit, the cost of notification and associated termination tasks, and the cost of storage and/or disposition of personal property.

(2) If, after making the charges in accordance with paragraph (d)(1) of this section, there is a debit balance in the MEPA, the IHA shall charge that debit balance first to the refundable MH reserve, and second to the nonrefundable MH reserve, to the extent of the credit balances in these reserves and account. If the debit balance in the MEPA exceeds the sum of the credit balances in these reserves and account,

the homebuyer shall be required to pay to the IHA the amount of the excess.

(3) If, after making the charges in accordance with paragraph (d)(1) of this section, there is a credit balance in the MEPA, this amount shall be refunded.

(4) Any credit balance remaining in the refundable MH reserve after making the charges described in paragraph (d)(2) of this section shall be refunded to the homebuyer.

(5) Any credit balance remaining in the nonrefundable MH reserve after making the charges described in paragraph (d)(2) of this section shall be retained by the IHA for use by the subsequent homebuyer.

(e) *Settlement upon termination; time for settlement.* Settlement with the homebuyer following a termination shall be made as promptly as possible after all charges provided in paragraph (d) of this section have been determined and the IHA has given the homebuyer a statement of such charges. The homebuyer may obtain settlement before determination of the actual cost of any maintenance required to put the home in satisfactory condition for the next occupant, if the homebuyer is willing to accept the IHA's estimate of the amount of such cost. In such cases, the amounts to be charged for maintenance shall be based on the IHA's estimate of the cost thereof.

(f) *Responsibility of IHA to terminate.* (1) The IHA is responsible for taking appropriate action with respect to any noncompliance with the MHO Agreement by the homebuyer. In cases of noncompliance that are not corrected as provided further in this paragraph (f), it is the responsibility of the IHA to terminate the MHO Agreement in accordance with the provisions of this section and to institute eviction proceedings against the occupant.

(2) As promptly as possible after a noncompliance comes to the attention of the IHA, the IHA shall discuss the matter with the homebuyer and give the homebuyer an opportunity to identify any extenuating circumstances or complaints that may exist. A plan of action shall be agreed upon that will specify how the homebuyer will come into compliance, as well as any actions by the IHA that may be appropriate. This plan shall be in writing and signed by both parties.

(3) Compliance with the plan shall be checked by the IHA not later than 30 days from the date thereof. In the event of refusal by the homebuyer to agree to such a plan or failure by the homebuyer to comply with the plan, the IHA shall issue a notice of termination of the MHO Agreement and institute eviction procedures against the homebuyer in

accordance with the provisions of this section on the basis of the noncompliance with the MHO Agreement.

(4) A record of meetings with the homebuyer, written plans of action agreed upon, and all other related steps taken in accordance with paragraph (f) of this section shall be maintained by the IHA for inspection by HUD.

(g) *Subsequent use of unit.* After termination of a homebuyer's interest in the unit, it remains as part of the MH project under the ACC. The IHA shall follow its policies for selection of a subsequent homebuyer for the unit under the MH program. (See § 950.449(g) for use of unit if no qualified subsequent homebuyer is available.)

§ 950.449 Succession.

(a) *Definition of "event."* "Event" means the death, mental incapacity, or other conditions as determined by the IHA, of all of the persons who have executed the MHO Agreement as homebuyers.

(b) *Designation of successor by homebuyer.* A homebuyer may designate a successor who, at the time of the event, would assume the status of homebuyer, provided that at the time of the event, the successor meets the conditions established by the IHA.

(c) *Succession by persons designated by homebuyer.* Upon occurrence of an event, the person designated as the successor shall succeed to the former homebuyer's rights and responsibilities under the MHO Agreement if the designated successor meets the criteria established by the IHA.

(d) *Designation of successor by IHA.* If at the time of the event there is no successor designated by the homebuyer, the IHA may designate another family member, in accordance with its occupancy policy.

(e) *Occupancy by appointed guardian.* If at the time of the event there is no qualified successor designated by the homebuyer or by the IHA, and a minor child or children of the homebuyer are living in the home, the IHA may, in order to protect their continued occupancy and opportunity for acquiring ownership of the home, approve as occupant of the home an appropriate adult who has been appointed legal guardian of the children with a duty to perform the obligations of the MHO Agreement in their interest and behalf.

(f) *Succession and occupancy on trust land.* In the case of a home on trust land, a person who is prohibited by law from succeeding to the IHA's interest on such land may, nevertheless, continue

in occupancy with all the rights, obligations, and benefits of the MHO Agreement, modified to conform to restrictions on succession to the land.

(g) *Termination in absence of qualified successor.* If there is no qualified successor in accordance with the IHA's approved Admissions and Occupancy policy, the IHA shall terminate the MHO Agreement and select a subsequent homebuyer from the top of the waiting list to occupy the unit under a new MHO Agreement. If a new homebuyer is unavailable or if the home cannot continue to be used for low-income housing in accordance with the Mutual Help program, the IHA may submit an application to HUD to convert the unit to the rental program in accordance with § 950.458 or to approve a disposition of the home, in accordance with subpart M of this part.

§ 950.452 Miscellaneous.

(a) *Annual statement to homebuyer.* The IHA shall provide an annual statement to the homebuyer that sets forth the credits and debits to the homebuyer's equity accounts and reserves during the year and the balance in each account at the end of each IHA fiscal year. The statement shall also set forth the remaining balance of the purchase price.

(b) *Insurance before transfer of ownership, repair, or rebuilding.* (1) *Insurance.* The IHA shall carry all insurance prescribed by HUD, including fire and extended coverage insurance upon the home.

(2) *Repair or rebuilding.* In the event the home is damaged or destroyed by fire or other casualty, the IHA shall consult with the homebuyers as to whether the home shall be repaired or rebuilt. The IHA shall use the insurance proceeds to have the home repaired or rebuilt unless there is good reason for not doing so. In the event the IHA determines that the home should not be repaired or rebuilt and the homebuyer disagrees, the matter shall be submitted to the Area ONAP for final determination. If the final determination is that the home should not be repaired or rebuilt, the IHA shall terminate the MHO Agreement, and the homebuyer's obligation to make required monthly payments shall be deemed to have terminated as of the date of the damage or destruction.

(3) *Suspension of payments.* In the event of termination of a MHO Agreement because of damage or destruction of the home, or if the home must be vacated during the repair period, the IHA will use its best efforts to assist in relocating the homebuyer. If the home must be vacated during the

repair period, required monthly payments shall be suspended during the vacancy period.

(c) *Notices.* Any notices by the IHA to the homebuyer required under the MHO Agreement or by law shall be delivered in writing to the homebuyer personally or to any adult member of the homebuyer's family residing in the home, or shall be sent by certified mail, return receipt requested, properly addressed, postage prepaid. Notice to the IHA shall be in writing and either delivered to an IHA employee at the office of the IHA, or sent to the IHA by certified mail, return receipt requested, properly addressed, postage prepaid.

§ 950.453 Counseling of homebuyers.

(a) *General.* (1) The IHA shall provide counseling to homebuyers in accordance with this section. The purpose of the counseling program shall be to develop:

- (i) A full understanding by homebuyers of their responsibilities as participants in the MH Project;
- (ii) Ability on their part to carry out these responsibilities; and
- (iii) A cooperative relationship with the other homebuyers.

(2) All homebuyers shall be required to participate in and cooperate fully with all official preoccupancy and postoccupancy counseling activities. Failure without good cause to participate in the program shall constitute a breach of the MHO Agreement.

(b) The IHA shall submit to the HUD Area ONAP a copy of its counseling program with its request for funding for approval.

(c) *Progress reports.* An IHA shall submit an annual progress report to the Area ONAP within 45 days of the end of its fiscal year or such later date as may be approved by the Area ONAP.

§ 950.455 Conversion of rental projects.

(a) *Applicability.* Notwithstanding other provisions of this part, an IHA may apply to the HUD Area ONAP for approval to convert any or all of the units in an existing rental project to the MH program.

(b) *Minimum requirements.* (1) In order to be eligible for conversion, the units shall have individually metered utilities and be in decent, safe, and sanitary condition. If the units are not decent, safe, and sanitary, the IHA shall submit a plan to correct unit deficiencies.

(2) Tenants or other applicants to be homebuyers of the proposed conversion units shall qualify for the program under § 950.416(b). The entire MH contribution required of the homebuyer

shall be made before the rental unit occupied by a tenant can be converted to the MH program.

(3) In the case of conversion of apartments or row houses to condominium or cooperative ownership, all units in a structure shall be converted, with all occupants at the time of the application qualified, in accordance with paragraph (b)(2) of this section. Any occupants who do not qualify or desire to convert shall be satisfactorily relocated and replaced with qualified occupants before application for conversion of the structure.

(c) *Application process.* The IHA shall submit a request for conversion to the HUD Area ONAP. The HUD Area ONAP shall review the application for legal sufficiency; tribal acceptance; demonstration of family interest; evidence that units are habitable, safe, and sanitary; family qualifications as discussed in paragraph (b)(2) of this section; and financial feasibility. If the IHA does not propose to convert all units in a project, the IHA's ability to operate the remaining rental units shall not be adversely affected.

§ 950.458 Conversion of Mutual Help projects to rental program.

(a) *Applicability.* Notwithstanding other provisions of this part, an IHA may apply to the HUD Area ONAP for approval to convert any or all Mutual Help project units to the rental program, whenever a homebuyer or homebuyers have lost the potential for ownership due to the inability to meet the cost of their homebuyer responsibilities.

(b) *Minimum requirements.* (1) The remaining balances in any reserve accounts shall be accounted for individually for each unit converted in a manner prescribed by HUD.

(2) The balance remaining in the MEPA, if any, is applied first to outstanding tenant accounts receivable, then to repair of homebuyer maintenance items, and finally returned to the homebuyer.

(c) *Application process.* The IHA shall submit a request for conversion to the HUD Area ONAP. The HUD Area ONAP shall review the application for legal sufficiency, tribal acceptance, demonstration of family interest, and financial feasibility. If the IHA does not propose to convert all units in a project, the IHA's ability to operate the remaining units shall not be adversely affected.

Subpart F—Self-Help Development in the Mutual Help Homeownership Opportunity Program

§ 950.470 Purpose and applicability.

(a) *Purpose.* The purpose of the Self-Help (SH) program is to provide an alternate method of developing units that will be less costly than other methods of development, will engender community pride and cooperation, and will provide training in construction skills that will have lasting value to participants. If an IHA is interested in pursuing SH development, it organizes a small group of families (six to ten) to build a substantial portion of the homes for all the families in the group, with technical assistance, supervision, and materials provided by the IHA, augmented by skilled labor obtained under contract. The participants are families who qualify for participation in the Mutual Help Homeownership Opportunity (MH) program, who have the ability to furnish their share of the required labor and who agree to participate in the cooperative effort to build homes for all members of the group.

(b) *Applicability.* Any IHA eligible for development funds may submit an application for a SH MH project.

§ 950.475 Basic requirements.

(a) *Contracts.* A SH MH project also involves three basic contracts in a form approved by HUD: an ACC for a MH project executed by HUD and the IHA after approval of the SH project application and after HUD approval of the development program, an SH agreement executed by the participating families and the IHA before construction begins, and a Mutual Help and Occupancy Agreement executed by the participating families and the IHA after construction completion.

(b) *Family participation.* Each family shall show the desire to work with other families in building their own homes and shall have the time to contribute the labor necessary to perform a substantial number of the tasks required in the construction of the homes. Each family shall sign an SH agreement with the IHA.

(c) *IHA capacity.* The IHA shall have the capacity to provide for the financial, legal, administrative, and technical responsibilities of the program. The IHA is required to provide assurance that the project will be completed, in the form of a letter of credit or its equivalent in an amount equal to 10 percent of the estimated Total Development Cost Standard.

(d) *Funding.* The funding for technical training and supervision of participating

families will be provided through development funds, and the cost will be included in the Total Development Cost (TDC) of the project. The cost of construction supervision and technical assistance shall generally be no more than 15 percent, but may not exceed 20 percent of the TDC of these SH homes.

(e) *Applicability of Indian preference.* In the selection of contractors to perform construction supervision, skilled labor, or other work under this program, the provisions concerning preference for Indians (§ 950.175) apply. In the selection of participating families, the provisions of § 950.416 apply.

(f) *Building code.* The building code used by the IHA in accordance with § 950.255 will apply to the homes constructed under this program.

§ 950.480 Self-Help agreement.

(a) *Timing.* The obligations under the Self-Help agreement, executed by the IHA and the families in a group selected by the IHA to participate in a Self-Help program, will be contingent upon HUD's approval of the development program. Each family will be obligated to be available to commence work at a time that fits the IHA's schedule for completion of prior tasks by skilled labor, but generally within 120 days of HUD's approval of the IHA's SH project development program, and to complete the work within a period not to exceed two years.

(b) *Pre-construction period.* The SH agreement will provide that, before construction begins, the participating families will be required to organize themselves, with the assistance of the IHA, and to participate in construction skills training.

(c) *Labor contribution.* (1) The SH agreement will specify the construction tasks to be performed by the participating families as their labor contribution, and the construction tasks to be performed under contract by skilled laborers. The number of tasks to be performed by the participating families shall constitute the vast majority of the tasks.

(2) The labor performed is not subject to the labor standards specified in section 12 of the United States Housing Act of 1937 (42 U.S.C. 1437j).

(3) The SH agreement will specify the circumstances under which it may be terminated.

(d) *Insurance requirements.* The SH agreement will provide that the families waive any liability claim against the IHA for any injury that might occur during the development of the project.

(e) *Standard provisions.* The SH agreement will include provisions

prohibiting kickbacks and conflicts of interest.

(f) *Completion.* The SH agreement will provide that upon successful completion of the family's obligations under it, the family and the IHA will execute a Mutual Help and Occupancy Agreement.

§ 950.485 Application.

(a) *General.* The application for a SH development method of Mutual Help project shall comply with the general requirements of § 950.225.

(b) *Need for Self-Help housing.* Evidence of the need for SH housing shall be submitted, including the following:

(1) The names, addresses, and number of persons in the household, and annual incomes of the families selected to participate;

(2) The SH agreement;

(3) Certification by the IHA that the participating families are believed to have the time and ability to fulfill their obligations under the SH agreement; and

(4) Such information as the incomes and sizes of other interested families who appear to be eligible.

(c) *Ability of IHA to administer SH housing.* The IHA shall demonstrate its ability to administer the program by identifying the staff members who will supervise construction and provide technical assistance, and describing their experience. If the IHA plans to contract with an outside entity to perform these functions, it shall follow the requirements concerning Indian preference. Regardless of the identity of the firm selected to perform this function, the IHA should identify the firm and briefly describe its experience. The IHA also shall demonstrate its capacity to administer the program, in accordance with § 950.475.

§ 950.490 Development program.

(a) In addition to complying with the requirements of § 950.260, the IHA's development program for a SH project submitted to HUD shall include the following:

(1) *IHA coordination plan.* The plan for organizing and implementing the development, including elements comparable to those covered in the standard Mutual Help construction contract, and the method of coordinating work of participating families and skilled contractors.

(2) *Difference in cost.* A description of how the development cost differs from the cost for a project constructed under a construction contract. This difference should reflect the labor contribution, after considering the construction supervision cost.

(3) *Special provisions for acquisition with rehabilitation projects.* A

description of the repair or rehabilitation work needed on each home to be acquired. The work needed on all the homes should be reasonably comparable in the amount of labor exchange that is required. The estimated number of hours of labor and a description of the work to be done shall be provided.

(4) *Certification of participation.* Certification by the IHA that the participating families have signed the SH agreement and remain able to fulfill their obligations under the SH agreement.

(5) *Changes since application stage.* Statement of any changes in the data submitted in the application.

(b) HUD will review the development program submitted by an IHA for a SH project with particular attention to the elements listed in paragraph (a) of this section.

§ 950.495 Default of Self-Help agreement.

(a) If the IHA determines that a participating family is failing to provide its labor contribution, as required in accordance with its SH agreement, it shall counsel the family about its obligations and encourage fulfillment of its responsibilities. If the failure of the family is jeopardizing the progress of the project, the IHA shall declare the family in default and terminate its participation in the project. Upon termination of the participation of one family, the IHA shall move expeditiously to select an alternate family to take over the responsibilities of the terminated family. If another qualified family cannot be found to assume the responsibilities of the terminated family, the unit may be converted to some other development method (e.g., force account, conventional bid, etc.) under the MH program.

(b) If the IHA determines that an entire group is unable to continue its work to completion of construction, the IHA shall first counsel the group about its obligations and encourage fulfillment of its responsibilities. If counseling is unsuccessful in bringing about satisfactory progress toward completion, the IHA shall declare the families in default and convert the project to a regular MH project. The IHA's plan for completing the project shall be submitted to HUD for review and counsel prior to terminating the Self-Help project. Availability of additional HUD funding for this purpose is not assured.

Subpart G—Turnkey III Program

§ 950.501 Introduction.

(a) *Purpose.* This subpart sets forth the requirements of the Turnkey III Homeownership Opportunities Program, which is administered by HUD as part of the Indian Housing Program under the United States Housing Act of 1937. This part covers the management, operation, conversion, and sale of existing Turnkey III homes that remain in Indian housing authority (IHA) ownership.

(b) *Program framework.* (1) All Turnkey III projects shall be operated in accordance with an executed Annual Contributions Contract (ACC), which includes the "Special Provisions for Turnkey III Homeownership Opportunity Project" and Homebuyer Ownership Opportunity Agreements (Homebuyer Agreement) between the IHA and the Homebuyer.

(2) A Turnkey III development may only include units that are to be operated for the purpose of providing homeownership opportunities for eligible low-income families pursuant to this part and the special Turnkey III provisions of the ACC, including units occupied temporarily by former homebuyers who, as a result of losing homeownership potential, have been transferred to rental status in place, pending the availability of a suitable rental unit. When a homebuyer is converted to rental status while remaining in the same unit, pending availability of a satisfactory rental unit or approval of a request to convert the unit in accordance with § 950.503, the unit remains under the Turnkey III project.

(3) An IHA may establish any policies, procedures, and requirements that are not contrary to the ACC, this part, other applicable Federal, State, and local statutes and regulations, and the rights of homebuyers under existing homebuyer agreements.

(c) *Program overview.* The Turnkey III Program provides homeownership opportunities for eligible low-income families. The program uses a lease-purchase arrangement, whereby the homebuyer family initially takes occupancy of a rental basis, under a homebuyer agreement which constitutes a lease with an option to purchase. The purchase price is set at the time of initial occupancy. During the period of rental tenancy, the homebuyer makes monthly rental payments based on a percentage of family income and is responsible for routine maintenance. A portion of the homebuyer monthly payment is used to establish an Earned Home Payments Account (EHPA) and a

Nonroutine Maintenance Reserve (NRMR). To the extent that these funds are not used by the IHA to perform maintenance relating to the home, the funds will be available to apply to the purchase price at the time the homebuyer is in a position to exercise the option to purchase. At closing, the homebuyer pays the IHA the balance of the purchase price due (or may be permitted by the IHA to finance all or a portion of that amount through a purchase money mortgage) and the IHA deeds the home to the homebuyer.

(d) *Contracts, agreements, other documents.* All contracts, agreements, and other documents referred to in this subpart shall be in a form approved by HUD, and changes shall be made with the approval of the Area ONAP.

§ 950.503 Conversion of Turnkey III developments.

(a) *Applicability.* Notwithstanding other provisions of this part, an IHA may apply to the Area ONAP for approval to convert any or all of the units in an existing Turnkey III development to the rental or MH program.

(b) *Minimum requirements.* (1) In order to be eligible for conversion, the units shall have individually metered utilities and be in decent, safe, and sanitary condition. If the units are not decent, safe, and sanitary, the IHA shall submit a plan to correct unit deficiencies.

(2) For conversion to MH, applicants shall qualify for the program under § 950.416(b). The entire MH contribution required of the homebuyer shall be made before the Turnkey III unit occupied by a tenant can be converted to the MH program. In determining the purchase price and term, the homebuyer may receive credit for the period of time they have been residing in a Turnkey III homeownership unit.

(c) *Application process.* The IHA shall submit a request for conversion to the HUD Area ONAP. The HUD Area ONAP shall review the application for legal sufficiency, tribal acceptance, demonstration of family interest, and financial feasibility. If the IHA does not propose to convert all units in a development, the IHA's ability to operate the remaining Turnkey III units shall not be adversely affected.

§ 950.505 Eligibility and selection of Turnkey III homebuyers.

(a) *Applications.* Families who wish to be considered for Turnkey III shall apply specifically for that program, and a separate list of eligible applicants for Turnkey III shall be maintained.

Applications shall be dated as received. The submission of an application for Turnkey III by a family that is also an applicant for conventional rental housing or that is an occupant of such housing shall in no way affect its status with regard to such rental housing. A family shall not lose its place on the waiting list until it is selected for Turnkey III and shall not receive any different treatment or consideration with respect to other rental housing programs due to having applied for Turnkey III. In order to be considered for selection, a family shall be determined to meet at least all of the following standards of potential for homeownership:

(1) Sufficient income to cover the EHPA, NRMR, and the estimated cost of utilities with its required monthly payment (see § 950.315); and

(2) Ability to meet all obligations under the Homebuyer Agreement.

(b) *Selection and notification of homebuyers.* Homebuyers shall be selected from those families determined to have potential for homeownership. Such selection shall be made in sequence from the waiting list.

§ 950.507 Homebuyer Ownership Opportunity Agreements (HOOA).

(a) *General.* The HOOA shall be executed between the IHA and the homebuyer as a condition for occupancy of a Turnkey III unit.

(b) *Pre-Existing Agreements.* (1) Turnkey III Projects in operation on the effective date of this subpart shall be governed by this subpart, except to the extent that the terms of any pre-existing Homebuyer Agreements shall govern the relationship of an IHA and occupant until the termination or cancellation of such agreement(s). If the agreement establishes a maximum or a minimum monthly payment, the terms of the agreement shall govern. However, in no event will the monthly payment charged exceed the Total Tenant Payment determined in accordance with subpart D of this part.

(2) Pre-existing Homebuyer Agreements that determined the required monthly payment in accordance with a "Schedule" developed by the IHA and approved by HUD should continue to determine the monthly payment in accordance with the schedule. This schedule is determined as follows:

(i) The operating budget for the project is based on estimated expenses for a given period of time. The amount needed to operate a particular project is called the break-even amount (see § 950.513(a)). This is comprised of the Operating Expenses, the total amount

needed for EHPA, and the total amount needed for NRMR.

(ii) The aggregate of all homebuyers' incomes is determined. (If no definition of income is stated in the homebuyer's contract, the definition in subpart A of this part is used.)

(iii) The percentage of aggregated income needed to cover 110 percent of the break-even amount is determined. This percentage is the one that appears in the schedule.

§ 950.509 Responsibilities of homebuyer.

(a) *Repair, maintenance, and use of home.* The homebuyer shall be responsible for the routine maintenance of the home to the satisfaction of the homebuyers' association (HBA) and the IHA.

(b) *Repair of damage.* In addition to the obligation for routine maintenance, the homebuyer shall be responsible for repair of any damage caused by the homebuyer, other occupants, or visitors.

(c) *Care of home.* A homebuyer shall keep the home in a sanitary condition; cooperate with the IHA and the HBA in keeping and maintaining the common areas and property, including fixtures and equipment, in good condition and appearance; and follow all rules of the IHA and the HBA concerning the use and care of the dwellings and the common areas and property.

(d) *Inspections.* A homebuyer shall agree to permit officials, employees, or agents of the IHA and the HBA to inspect the home at reasonable hours and intervals in accordance with rules established by the IHA and the HBA.

(e) *Use of home.* (1) A homebuyer shall not:

(i) Sublet the home without the prior written approval of the IHA;

(ii) Use or occupy the home for any unlawful purpose; or

(iii) Provide accommodations (unless approved by the HBA and the IHA) to boarders or lodgers.

(2) The homebuyer shall agree to use the home primarily as a place to live for the family (as identified in the initial application or by subsequent amendment with the approval of the IHA).

(f) *Obligations with respect to other persons and property.* Neither the homebuyer nor any other member of the family shall interfere with the rights of other occupants of the development, damage the common property or the property of others, or create physical hazards.

(g) *Structural changes.* A homebuyer shall not make any structural changes in or additions to the home unless the IHA has determined that such change would not:

(1) Impair the value of the unit, the surrounding units, or the development as a whole; or

(2) Affect the use of the home for residential purposes;

(h) *Statements of condition and repair.* When each homebuyer moves in, the IHA shall inspect the home and shall give the homebuyer a written statement, to be signed by the IHA and the homebuyer, of the condition of the home and the equipment in it. Should the homebuyer vacate the home, the IHA shall inspect it and give the homebuyer a written statement of the repairs and other work, if any, required to put the home in good condition for the next occupant. The homebuyer or the homebuyer's representative and a representative of the HBA may join in any inspections by the IHA.

(i) *Maintenance of common property.* The homebuyer may participate in nonroutine maintenance of the home and in maintenance of common property.

(j) *Assignment and survivorship.* Until such time as the homebuyer obtains title to the home, the following conditions apply:

(1) A homebuyer shall not assign any right or interest in the home or any interest under the Homebuyer Ownership Opportunity Agreement without the prior written approval of the IHA;

(2) In the event of death, mental incapacity, or other condition as determined by the IHA, the person designated as the successor in the Homebuyer Ownership Opportunity Agreement shall succeed to the rights and responsibilities under the agreement if that person meets the conditions established by the IHA. Such person shall be designated by the homebuyer. If there is no such designation, or the designee does not meet the standards of potential for homeownership, the IHA may consider as the homebuyer any family member who meets the standards of potential for homeownership;

(3) If there is no qualified successor in accordance with paragraph (j)(2) of this section, and no minor child of the homebuyer's family is in occupancy, the IHA shall terminate the agreement and select another family. Where a minor child or children of the homebuyer's family is in occupancy, and an appropriate adult(s) who has been appointed legal guardian of the children is able and willing to perform the obligations of the Homebuyer Ownership Opportunity Agreement in their interest and on their behalf, then in order to protect continued occupancy and opportunity for acquisition of

ownership of the home, the IHA may approve the guardian(s) as occupants of the unit with a duty to fulfill the homebuyer obligations under the agreement.

§ 950.511 Homebuyers' association (HBA).

(a) *General.* (1) The homebuyers' association (HBA) is an incorporated organization composed of all homebuyers and homeowners. Each Turnkey III development shall have an HBA, unless the homes are on scattered sites (noncontiguous lots throughout a multi-block area with no common property), or the number of homes in the development may be too few to support an HBA. For such cases, a modified form of homebuyers association or a less formal organization may be desirable. This decision shall be made jointly by the IHA and the homebuyers.

(2) The functions of the HBA shall be set forth in its articles of incorporation and by-laws. The IHA shall assist the HBA in its organization and operation to the extent possible.

(b) *Funding.* The IHA may provide noncash contributions to the HBA, such as office space, as well as cash contributions, which shall be provided for in the annual operating budgets of the IHA. The cash contributions shall be in an amount provided for in the IHA budget and shall be subject to any HUD restrictions on funding.

§ 950.512 Homeowner's association (HOA).

A "homeowners' association" means an association comprised of homeowners, to which the IHA conveys ownership of common property, and which thereafter has responsibilities with respect to the common property. Only residents who have acquired title to their homes are members of the HOA.

§ 950.513 Break-even amount and application of monthly payments.

(a) *Definition.* The term "break-even amount" as used herein means the minimum average monthly amount required to provide funds for the amounts budgeted for operating expenses, the EHPA, and the NRMR. A separate break-even amount is established for each size and type of dwelling unit, as well as for the project as a whole. The break-even amount for EHPA and NRMR will vary by size and type of dwelling unit. Similar variations may occur for operating expenses. The break-even amount does not include the monthly allowance for utilities that the homebuyer pays directly.

(b) *Application of monthly payments.* The IHA shall apply the homebuyer's monthly payment as follows:

(1) To the credit of the homebuyer's EHPA;

(2) To the credit of the homebuyer's NRMR; and

(3) For payment of monthly operating expense, including contributions to the operating reserve.

(c) *Excess over break-even.* When the homebuyer's required monthly payment exceeds the applicable break-even amount, the excess shall constitute additional project income and shall be deposited and used in the same manner as other project income.

(d) *Deficit in monthly payment.* When the homebuyer's required monthly payment is less than the applicable break-even amount, the deficit shall be applied as a reduction of that portion of the monthly payment designated for operating expense (i.e., as a reduction of project income). In all cases, the homebuyer payment shall be sufficient to cover the EHPA and the NRMR, which shall be credited with the amount included in the break-even amount for these accounts.

§ 950.515 Monthly operating expense.

(a) *Definition and categories of monthly operating expense.* The term "monthly operating expense" means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, etc.;

(2) *Homebuyer services.* IHA expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contracts, and other costs;

(3) *Utilities.* Those utilities (such as water), if any, to be furnished by the IHA as part of operating expense;

(4) *Routine maintenance of common property.* For community building, grounds, and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the development and the extent of the IHA's responsibility for maintenance;

(5) *Protective services.* The cost of supplemental protective services paid by the IHA for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.;

(7) *Nonroutine maintenance of common property (contribution to operating reserve).* Extraordinary maintenance of equipment applicable to the community building and grounds,

and unanticipated items for nondwelling structures.

(b) *Monthly operating expense rate.*

(1) The monthly operating expense rate to be included in the break-even amount for each fiscal year shall be established on the basis of the IHA's operating budget for that fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD regulations, contracts, and handbooks.

(2) If it is subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expenses to be established for the next fiscal year may be adjusted to account for the differences.

(c) *Posting of monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating expense category shall be provided to the HBA, and copies shall be provided to homebuyers upon request.

§ 950.517 Earned Home Payments Account (EHPA).

(a) *Credits to the account.* The IHA shall establish and maintain a separate EHPA for each homebuyer. Since the homebuyer is responsible for maintaining the home, a portion of the required monthly payment equal to the IHA's estimate of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the homeowner's home, shall be set aside in the EHPA. In addition, this account shall be credited with:

(1) Any voluntary payments made pursuant to paragraph (f) of this section; and

(2) Any amount earned through the performance of maintenance as provided in paragraph (c) of this section.

(b) *Charges to the account.* (1) If for any reason the homebuyer is unable or fails to perform any item of required maintenance, the IHA shall arrange to have the work done in accordance with the procedures established by the IHA and the HBA, and the cost thereof shall be charged to the homebuyer's EHPA. Inspections of the home shall be made jointly by the IHA and HBA.

(2) To the extent NRMR expense is attributable to the negligence of the homebuyer as determined by the HBA and approved by the IHA (see § 950.519), the cost thereof shall be charged to the EHPA.

(c) *Additional equity through maintenance of common property.*

Homebuyers may earn addition EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the development. When such maintenance is to be provided by the homebuyer, this may be done and credit earned therefore only pursuant to a prior written agreement between the homebuyer and the IHA (or the homeowners' association, depending on who has responsibility for maintenance of the property involved), covering the nature and scope of the work and the amount of credit the homebuyer is to receive. In such cases, the agreed amount shall be charged to the appropriate maintenance account and credited to the homebuyer's EHPA upon completion of the work.

(d) *Investment of excess.* (1) When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the IHA shall notify the HBA and shall invest the excess in Federally insured savings accounts, Federally insured credit unions, and/or securities approved by HUD, and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program, it should submit periodically to the IHA a list of HUD-approved securities, bonds, or obligations that the association recommends for investment by the IHA of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each homebuyer's EHPA in proportion to the amount in each such reserve account.

(2)(i) Periodically, but not less often than annually, the IHA shall prepare a statement showing:

(A) The aggregate amount of all EHPA balances,

(B) The aggregate amount of investments (savings accounts and/or securities) held for the account of all the homebuyers' EHPAs, and

(C) The aggregate uninvested balance of all the homebuyers' EHPAs.

(ii) This statement shall be made available to any authorized representative of the HBA.

(e) *Voluntary payments.* To enable the homebuyer to acquire title to the home within a shorter period, the homebuyer may make payments over and above the required monthly payments. Such voluntary payments shall be credited to the homebuyer's EHPA.

(f) *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the IHA, a homebuyer's EHPA may be used to pay the delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the

homebuyer agrees to cooperate in such counseling as may be made available by the IHA or the HBA.

(g) *Annual statement to homebuyer.* The IHA shall provide an annual statement to each homebuyer specifying the amounts in the EHPA and the NRMR. Any maintenance or repair done on the dwelling by the IHA that is chargeable to the EHPA or to the NRMR shall be accounted for through a work order, a copy of which shall be sent to the homebuyer.

(h) *Withdrawal and assignment.* The homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in its EHPA except as provided in this section or in § 950.525.

(i) *Application of EHPA upon vacating of dwelling.* (1) In the event a homebuyer agreement is terminated the IHA shall charge against the homebuyer's EHPA the amounts required to pay:

(i) The amount due the IHA, including the monthly payments the homebuyer is obligated to pay up to the date the homebuyer vacates;

(ii) The monthly payment for the period the home is vacant, not to exceed 60 days from the date of notice of intention to vacate, or if the homebuyer fails to give notice of intention to vacate, 60 days from the date the home is put in good condition for the next occupant; and

(iii) The cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant.

(2) If the EHPA balance is not sufficient to cover all of these charges, the IHA shall require the homebuyer to pay the additional amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined, provided that the IHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates.

§ 950.519 Nonroutine Maintenance Reserve (NRMR).

(a) *Purpose of reserve.* The IHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule

for the home. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the home to the extent such maintenance is attributable to the homebuyer's negligence or to defective materials or workmanship.

(b) *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the IHA, on the basis of the Nonroutine Maintenance Schedule showing the amount likely to be needed for nonroutine maintenance of the home during the term of the Homebuyer Ownership Opportunity Agreement, taking into consideration the type of construction and dwelling equipment. The IHA shall prepare this schedule and reexamine it annually.

(c) *Charges to NRMR.* (1) The IHA shall provide the nonroutine maintenance necessary for the home, and the cost thereof shall be funded as provided in paragraph (c)(2) of this section. Such maintenance may be provided by the homebuyer but only pursuant to a prior written agreement with the IHA covering the nature and scope of the work and the amount of credit the homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the homebuyer's EHPA and charged as provided in paragraph (c)(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the home except that:

(i) To the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the homebuyer disagrees; and

(ii) To the extent such maintenance is attributable to defective materials or workmanship not covered by the warranty, or even though covered by the warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the homebuyer's monthly payments. If there is still a deficit when the homebuyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMR.* (1) In the event the homebuyer agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent

homebuyer moves in, a credit balance in the NRMR shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMR, the IHA shall pay such balance to the homeowner at settlement. In the event the homebuyer purchases and there is a deficit in the NRMR, the homebuyer shall pay such deficit to the IHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the homes exceeds the estimated reserve requirements for 90 days, the IHA shall invest the excess in Federally insured savings accounts, Federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each homebuyer's NRMR in proportion to the amount in each reserve account.

(2) (i) Periodically, but not less often than annually, the IHA shall prepare a statement showing:

(A) The aggregate amount of all NRMR balances,

(B) The aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMRs, and

(C) The aggregate uninvested balance of the NRMRs.

(ii) The IHA shall make a copy of this statement available to any authorized representative of the HBA.

§ 950.521 Operating reserve.

(a) *Purpose of the reserve.* To the extent that total operating receipts (including subsidies for operations) exceed total operating expenditures of the project, the IHA shall establish an operating reserve in connection with its annual operating budgets for the project. The purpose of this reserve is to provide funds for:

(1) The infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items that constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures;

(2) Nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty;

(3) Working capital, including funds to cover a deficit in a homebuyer's NRMR until such deficit is offset by future monthly payments by the homeowner or a settlement in the event the homebuyer should purchase;

(4) A deficit in the operation of the project for a fiscal year, including any deficit resulting from monthly payments totaling less than the break-even amount for the project;

(5) Nonroutine maintenance of vacated homes with insufficient NRMR balances to put them in suitable condition for reoccupancy by subsequent homeowners; and

(6) The cost of utilities on a temporary basis for an individual unit by way of a utility reimbursement when a homebuyer has insufficient tenant income to cover even the utilities.

(b) *Nonroutine maintenance of common property (contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year shall be determined by the IHA, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This contribution to the operating reserve shall be made only during the period the IHA is responsible for the maintenance of any common property; during such period, the amount shall be determined on the basis of the requirements of all common property in the development.

(c) *Transfer to homeowners' association.* Where a Turnkey III development includes common property, the IHA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners' association. When the homeowners acquire voting control, the homeowners' association shall then assume full responsibility for management and maintenance of common property under a plan, agreed upon by the IHA and the homeowners association, and the IHA shall transfer to the homeowners' association a portion of the operating reserve then held by the IHA. This provision shall not apply when there is no common property or when there is no duly organized and functioning homeowners association.

(d) *Disposition of reserve.* Following the end of the fiscal year in which the last home has been conveyed by the IHA, the balance of the operating reserve held by the IHA shall be retained by the IHA in a replacement reserve if an ACC amendment has been executed implementing loan forgiveness, provided that the aggregate amount of payments by the IHA under this paragraph (d) shall not exceed the aggregate amount of annual

contributions paid by HUD with respect to the development.

§ 950.523 Operating subsidy.

HUD may pay operating subsidy, subject to the availability of funds for this purpose and at HUD's sole discretion, to cover an operating deficit in an operating budget. However, operating subsidy or project funds may not be used to establish or maintain the homebuyer reserve accounts.

§ 950.525 Purchase price and methods of purchase.

(a) *Purchase price.* The purchase price for the initial and subsequent homebuyer shall be determined by the IHA.

(b) *Purchase price schedule.* On the date when the homebuyer agreement is signed, the IHA shall provide the homebuyer with a Purchase Price Schedule, showing the monthly declining purchase price over the term of the HOOA agreement (a period not less than 15 years or more than 25 as determined by the IHA, at an interest rate determined by the IHA). The IHA may choose to forego charging interest and calculate the payment with an interest rate of zero.

(c) *Methods of purchase.* (1) The homebuyer may achieve ownership when the amount in the EHPA, plus such portion of the NRMR as the homebuyer wishes to use for the purchase, is equal to the unamortized balance purchase price as shown at that time on the homebuyer's purchase price schedule plus all incidental costs (the costs incidental to acquiring ownership, including but not limited to the costs for a credit report, field survey, title examination, title insurance, inspections, the fees for attorneys other than the IHA's attorney, mortgage application, closing and recording, and the transfer taxes and loan discount payment, if any). If for any reason title to the home is not conveyed to the homebuyer during the month in which the combined total in the EHPA and designated portion of the NRMR equals the purchase price, the balance of the purchase price shall be fixed as the amount specified for that month, and the homebuyer shall be refunded:

(i) The net additions, if any, credited to the EHPA after that month; and

(ii) Such part of the monthly payments made by the homebuyer after the balance of the purchase price has been fixed that exceeds the break-even amount attributable to the unit.

(2) Where the sum of the unamortized balance of the purchase price and incidental costs is greater than the amounts in the homebuyer's EHPA and

NRMR, the homebuyer may achieve ownership by obtaining financing for or otherwise paying the excess amount. The unamortized balance of the purchase price shall be the amount shown on the homebuyer's purchase price schedule for the month in which the settlement date for the purchase occurred.

(3) Period required to achieve ownership. The maximum period for achieving ownership shall be 30 years, but depending upon increases in the homebuyer's income and the amount of credit the homebuyer can accumulate in the EHPA and NRMR, the period may be shortened accordingly.

(4) Residual receipts. After payment in full of the IHA's debt, if there are any subsequent homebuyers who have not acquired ownership of their homes, the IHA shall retain all residual receipts from the operation of the development in a replacement reserve.

(5) IHA financing. The IHA may, at its discretion, provide financing for purchases by homebuyers, or assist with financing, by such methods and on such terms and conditions as may agreeable to the IHA and the homebuyer.

(6) Transfer of title to homebuyer. When the homebuyer is to obtain ownership, the parties shall mutually agree upon a closing date. On the closing date, the homebuyer shall pay the required amount of money to the IHA and receive a deed for the home.

§ 950.529 Termination of Homebuyer Ownership Opportunity Agreement.

(a) *Termination by IHA.* (1) In the event the homebuyer should breach the Homebuyer Ownership Opportunity Agreement by failure to make the required monthly payment, by misrepresentation or withholding information in applying for admission or in connection with any subsequent reexamination of income and family composition, by failure to comply with any of the other homebuyer obligations under the agreement, by loss of homeownership potential (beyond a temporary, unforeseen change in circumstances), an income that requires outright purchase, the IHA may terminate the agreement 30 days after giving the homebuyer notice of its intention to do so in accordance with paragraph (a)(2) of this section.

(2) Notice of termination by the IHA shall be in writing. Such notice shall state:

(i) The reason for termination;

(ii) That the homebuyer may respond to the IHA, in writing or in person, within a specified reasonable period of time regarding the reason for termination;

(iii) That in such response the homebuyer may be represented by the HBA;

(iv) That the IHA will consult the HBA concerning this termination;

(v) That unless the IHA rescinds or modifies the notices, the termination shall be effective at the end of the 30-day notice period; and

(vi) That, in the case of termination as a result of loss of homeownership potential when the homebuyer is otherwise in compliance with the agreement, the family will be offered a transfer to a rental unit (whether or not in concert with a conversion of that unit to the rental program). If a rental unit of appropriate size is available, the family will be notified of a transfer to that unit. If no other unit is then available and the homebuyer's current unit is not to be converted to rental, the family will be notified that it may remain in place until an appropriate rental unit becomes available (in which case the unit remains under the Turnkey III project). Otherwise, the notice shall state that the transfer shall occur as soon as a suitable rental unit is available for occupancy, but no earlier than 30 days from the date of the notice. The notice shall also state that if the homebuyer should refuse to move under such circumstances, the family may be required to vacate the homebuyer unit, without further notice.

(b) *Termination by the homebuyer.* The homebuyer may terminate the Homebuyer Ownership Opportunity Agreement by giving the IHA 30 days notice in writing of the intention to terminate and vacate the home. In the event that the homebuyer vacates the home without notice to the IHA, the agreement shall be terminated automatically, and the IHA may dispose of, in any manner deemed suitable by it, any items of personal property left by the homebuyer in the home.

(c) *Transfer to the rental program.* In the event of termination of the Homebuyer Ownership Opportunity Agreement by the IHA or by the homebuyer with adequate notice, the homebuyer may be transferred to a suitable unit in the rental program, in accordance with § 950.503 or terminated from occupancy. If the homebuyer is transferred to the rental program, the amount in the homeowner's EHPA shall be paid in accordance with § 950.517(i).

Subpart H—Lead-Based Paint Poisoning Prevention

§ 950.551 Purpose and applicability.

The purpose of this subpart is to implement the provisions of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, by establishing

procedures to eliminate as far as practicable the immediate hazards from the presence of paint which may contain lead in IHA-owned housing assisted under the United States Housing Act of 1937. This subpart applies to IHA-owned low-income housing projects, including Turnkey III, Mutual Help, and conveyed Lanham Act and Public Works Administration projects, and to section 23 Leased Housing Bond-Financed projects. This subpart does not apply to projects under the section 23 Leased Housing Non-Bond-Financed Program, the section 10(c) Leased Housing Program, or the section 23 and section 8 Housing Assistance Payments programs. This subpart is promulgated in accordance with the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR part 35.

§ 950.553 Testing and abatement applicable to development.

(a) *Pre-acquisition testing.* With respect to development, all existing properties constructed before 1978 (or substantially rehabilitated before 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) shall be tested for lead-based paint on applicable surfaces (as defined in subpart A of this part).

(b) *Pre-occupancy abatement.* If units containing lead-based paint are acquired, compliance with parts 35 and this subpart is required, and abatement shall be completed before occupancy.

(c) *Compliance with guidelines.* It is strongly encouraged, but not required, that all such properties be tested in accordance with the Lead-Based Paint Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (hereafter Lead-Based Paint Interim Guidelines), which were published at 55 FR 14555 and 55 FR 39874 (1990), as periodically amended or updated, and other future official departmental issuances related to lead-based paint, before any irrevocable commitment is made to acquire the property. Properties that have already been tested in accordance with the Lead-Based Paint Poisoning Prevention Act as amended by the Housing and Community Development Act of 1987 need not be tested again. If lead-based paint is found in a property to be acquired, the cost of testing and abatement shall be considered when making the cost comparison to justify new construction, as well as when meeting maximum total development cost limitations.

§ 950.555 Testing and abatement applicable to modernization.

(a) *Applicability of requirements—(1) General.* With respect to modernization, the IHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and HUD implementing regulations (24 CFR part 35 and this subpart H). The five-year funding request plan for CIAP (as described in § 950.610) shall be amended to include the schedule for lead-based paint testing and abatement. Random testing shall be completed by December 6, 1994 (42 U.S.C. 4822(d)(2)(B)). Testing and abatement shall be completed with respect to all family projects constructed or substantially rehabilitated before 1978 approved for (or applications for) comprehensive and homeownership modernization; other pre-1978 family projects not undergoing comprehensive and homeownership modernization; and special purpose modernization. Any previous testing or abatement work that was done in accordance with HUD's implementing regulations, effective June 6, 1988, or the Lead-Based Paint Poisoning Prevention Act as amended by the Housing and Community Development Act of 1987 shall not be redone to comply with the requirements of this section.

(2) *Special Purpose.* The requirements for lead-based paint testing and abatement apply to the following three categories of special purpose modernization: vacant unit reduction; accessibility for handicapped (for any dwelling in such housing in which any child who is less than 7 years of age resides or is expected to reside); and cost effective energy efficiency measures. In the case of funding for accessibility for the handicapped and cost-effective energy efficiency measures, LBP testing and abatement shall be performed only when the rehabilitation involves removal of walls, doors, and windows. The HUD Area ONAP may determine on a case-by-case basis whether lead-based paint testing and abatement should be allowed for an IHA requesting special purpose modernization for physical improvements to replace or repair major equipment systems or structural elements (such as, the exterior of buildings). With regard to lead-based paint testing for special purpose modernization, if the project has already been randomly sampled before May 15, 1991, using the criteria found in the June 6, 1988 regulations (see paragraph (a)(1) of this section) or after May 15, 1991, using the criteria outlined in paragraph (b) of this section. If lead-based paint is found as a result of

previous random testing or current testing, it must be abated.

(b) *Which standards apply—(1) Comprehensive, special purpose, and homeownership modernization in progress.* With respect to family projects approved for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the Act) that may contain lead-based paint for which funds were reserved by HUD by May 15, 1991, the following standards apply:

(i) IHAs that awarded any construction contract (including architectural and engineering (A&E) contracts) before April 1, 1990, are subject to the provisions regarding random testing and abatement in effect at the time of award.

(ii) IHAs that advertise for bid or award a construction contract (including A&E contracts) or plan to start force account work on or after April 1, 1990, excluding those contracts solely for emergency work items, shall not execute these contracts until random testing as described in this section has taken place and any necessary abatement as described in this section is included in the modernization budget.

(2) *Applications for comprehensive, special purpose, and homeownership modernization projects.* With respect to applications for family projects for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the Act) that may contain lead-based paint, no construction contracts awarded on or after April 1, 1990 (including A&E contracts and force account work), excluding those contracts solely for emergency work items, shall be executed until random testing as described in this section has taken place and any necessary abatement as described in this section is included in the modernization budget.

(3) *Lead-based paint modernization; other family projects not undergoing comprehensive, special purpose, or homeownership modernization.* Any pre-1978 family project (assisted under section 14 of the Act) not undergoing comprehensive, special purpose, or homeownership modernization (as covered in paragraphs (b)(1) and (2) of this section) including a pre-1978 family project that previously has been modernized with comprehensive, special purpose, or homeownership modernization grants under previous regulations shall be randomly tested as described in this section, and abated as described in this section if lead-based paint is found, unless testing and abatement was previously done in

accordance with paragraph (a) of this section.

(c) *Testing*—(1) *Random testing*. Random testing as described in this paragraph (c)(1) is an eligible cost under lead-based paint modernization and is a planning cost as described in § 950.605(d). Interior common areas to be sampled include IHA-owned or operated child care facilities.

(i) *Initial random test*. IHAs shall use random testing on family projects (including homeownership units) constructed or substantially rehabilitated before 1978. It is strongly recommended, but not required, that IHAs use the random testing methodology set forth in the lead-based paint interim guidelines, as periodically amended or upgraded, and other future outstanding departmental issuances in effect at the time of testing. Random testing shall be scheduled or prioritized by age of the family projects and whether the family projects are known to have lead-based paint or the presence of previous elevated blood levels (EBLs).

(ii) *Followup*. If evidence of lead-based paint is found in units that were in the random sample, the IHA is required to:

(A) Test the corresponding surfaces where lead-based paint was found in other units of the universe being tested; or

(B) Abate all like surfaces in that universe without further testing.

(2) *Universal testing*. For scattered site family projects involving single-unit structures that are not contiguous or were built and/or rehabilitated at different times, the IHA shall cause each unit to be tested for lead-based paint.

(d) *Abatement*. Abatement shall be performed in accordance with § 950.570. Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards to children under seven years of age.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2577-0090).

§ 950.560 Notification.

(a) *General LBP Hazard Notification for all Residents*. Tenants in IHA-owned low-income public housing projects constructed before 1978 shall be notified:

(1) That the property was constructed before 1978;

(2) That the property may contain lead-based paint;

(3) Of the hazards of lead-based paint;

(4) Of the symptoms and treatment of lead-based paint poisoning;

(5) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards); and

(6) Of the advisability and availability of blood lead level screening for children under seven years of age. Tenants shall be advised to notify the IHA if a child is identified as having an elevated lead blood level (EBL) condition.

(b) *Lead-Based Paint Hazard Notification for Applicants and prospective purchasers*. A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children under seven years of age shall be provided to every applicant family at the time of application. The applicant family shall be advised, if screening is utilized and an EBL condition identified, to notify the IHA.

(c) *Notification of Positive Lead-Based Paint Test Results*. In the event that an IHA-owned project constructed or substantially rehabilitated before 1978 is tested and the test results using an x-ray fluorescence analyzer (XRF) are identified as having a lead content greater than or equal to 1.0 mg/cm², or is tested by laboratory chemical analysis (atomic absorption spectroscopy (AAS)) and found to contain .5% lead by weight or more, the IHA shall provide written notification of such result to the current residents, applicants, prospective purchasers, and homebuyers of such units in a timely manner. The IHA shall retain written records of the notification.

§ 950.565 Maintenance obligation; defective paint surfaces.

In family projects constructed or substantially rehabilitated before 1978, the IHA shall visually inspect units for defective paint surfaces as part of routine periodic unit inspections. If defective paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(2) shall be required. Treatment shall be completed within a reasonable period of time.

§ 950.570 Procedures involving EBLs.

(a) *Procedures where a current resident child has an EBL*. When a child residing in an IHA-owned low-income housing project has been identified as having an EBL, the IHA shall:

(1) Test all surfaces in the unit and applicable surfaces of any IHA-owned and operated child care facility if used by the EBL child for lead-based paint and abate the surfaces found to contain lead-based paint. Testing of exteriors

and interior common areas (including non-dwelling IHA facilities that are commonly used by the EBL child under seven years of age) will be done as considered necessary and appropriate by the IHA and HUD; or

(2) Transfer the family with an EBL child to a post-1978 or to a previously tested unit that was found to be free of lead-based paint hazards or in which such hazards have been abated as described in this section.

(b) *Procedures where a non-resident child using an IHA-owned or operated child care facility has an EBL*. When a non-resident child using an IHA-owned or operated child care facility has been identified as having an EBL, the IHA shall test all applicable surfaces of the IHA-owned or operated child care facility and abate the surfaces found to contain lead-based paint.

(c) *Testing*. Testing shall be completed within five days after notification to the IHA of the identification of the EBL child. A qualified inspector or laboratory shall certify in writing the precise results of the inspection. Testing services available from State, local, or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. If the results equal or exceed a level of 1 mg/cm² or .5% by weight, the results shall be provided to the tenant or the family of the EBL child using the IHA-owned or operated child care facility. Testing will be considered an eligible modernization cost under subpart I of this part only upon IHA certification that testing services are otherwise unavailable.

(d) *Hazard abatement requirements*—(1) *Abatement actions*. Hazard abatement actions shall be carried out in accordance with the following requirements and order of priority:

(i) *Unit housing a child with an EBL*. Any surface in the unit found to contain lead-based paint shall be treated. Where full treatment of a unit housing an EBL child cannot be completed within five days after positive testing, emergency intervention actions (including removing defective lead-based paint and scrubbing surfaces after such removal with strong detergents) shall be taken within such time. Full treatment of a unit housing an EBL child shall be completed within 14 days after positive testing, unless funding sources are not immediately available. In such event, the IHA may use its operating reserves and, when necessary, may request reimbursement from the current fiscal year CIAP funds, or request the reprogramming of previously approved CIAP funds.

(ii) *IHA-owned or operated child care facility used by a child with an EBL.* Any applicable surface found to contain lead-based paint shall be treated.

(iii) *Interior common areas (including nondwelling IHA facilities that are commonly used by EBL children under seven years of age) and exterior surfaces of projects in which children with EBLs reside.* Abatement shall be provided to all surfaces containing lead-based paint.

(2) *Abatement methods.* IHAs shall select a safe and cost effective treatment for surfaces found to contain lead-based paint, including clean-up procedures, and are strongly encouraged, but not required, to follow those methods specified in the Lead-Based Paint Interim Guidelines, and other future official departmental issuances relating to lead-based paint abatement in effect at the time the surfaces are to be abated. Certain prohibited abatement methods are set forth in § 35.24(b)(2)(ii) of this title. Final inspection and certification after treatment shall be made by a qualified inspector, industrial hygienist, or local health official based on clearance levels specified in HUD departmental issuances and guidelines.

(3) *Tenant protection.* The IHA shall take appropriate action to protect tenants including children with EBLs, other children, and pregnant women, from hazards associated with abatement procedures, and is strongly encouraged, but not required, to take actions more fully outlined in the Lead-Based Paint Interim Guidelines and other future official departmental issuances related to tenant protection in effect at the time the abatement procedure is undertaken. Tenant relocation may be accomplished with CIAP assistance.

(4) *Disposal of lead-based paint debris.* The IHA shall dispose of lead-based paint debris in accordance with applicable local, State, or Federal requirements. Additional information covering disposal practices is contained in the Lead-Based Paint Interim Guidelines and other future official departmental issuances relating to lead-based paint. In any event, the Environmental Protection Agency (EPA) has primary responsibility for waste disposal regulations and procedures. (see, e.g., 40 CFR parts 260 through 271.)

(e) *Records.* The IHA shall maintain records on which units, common areas, exteriors, and IHA child care facilities have been tested, results of the testing, and the condition of painted surfaces by location in or on the unit, interior common area, exterior surface, or IHA child care facility. The IHA shall report information regarding such testing, in accordance with such requirements as

shall be prescribed by HUD. The IHA shall also maintain records of abatement provided under this subpart, and shall report information regarding such abatement, and its compliance with the requirements of 24 CFR part 35 and § 950.555, in accordance with such requirements as shall be prescribed by HUD. If records establish that a unit, an IHA child care facility, an exterior or interior common area was tested or treated in accordance with the standards prescribed in this subpart, that unit, child care facility, exterior or interior common area is not required to be re-tested or re-treated.

(Information collection requirements contained in paragraph (e) were approved by the Office of Management and Budget under control number 2577-0090)

§ 950.575 Compliance with tribal, State and local laws.

(a) *IHA responsibilities.* Nothing in this subpart is intended to relieve an IHA of any responsibility for compliance with tribal, State, or local laws, ordinances, codes, or regulations governing lead-based paint testing or hazard abatement. The IHA shall maintain records evidencing compliance with applicable tribal, State, or local requirements, and shall report information concerning such compliance, in accordance with such requirements as shall be prescribed by HUD.

(b) *HUD responsibility.* If HUD determines that a tribal, State, or local law, ordinance, code, or regulation provides for lead-based paint testing or hazard abatement in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in such a manner as may be appropriate to promote efficiency while ensuring such comparable level or protection.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under OMB Control Number 2577-0090).

§ 950.580 Monitoring and enforcement.

IHA compliance with the requirements of this subpart H will be included in the scope of HUD monitoring of IHA operations. Noncompliance with any requirement of this subpart may subject an IHA to sanctions provided under the Annual Contributions Contract or to

enforcement by other means authorized by law.

§ 950.585 Insurance coverage.

For the requirements concerning an IHA's obligation to obtain reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint, see § 950.195.

Subpart I—Modernization Program

General Provisions

§ 950.600 Purpose and applicability.

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

(1) Improve the physical condition and upgrade the management and operation of existing Indian housing developments;

(2) Assure that such developments continue to be available to serve low-income families;

(3) Assess the risks of lead-based paint poisoning through the use of professional risk assessments that include dust and soil sampling and laboratory analysis in all developments constructed before 1980 that are, or will be occupied by families; and

(4) Take effective interim measures to reduce and contain the risks of lead-based paint poisoning recommended in such professional risk assessments.

(b) *Applicability.* (1) The sections under the undesignated heading "General Provisions" applies 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. For purposes of the 250 or more unit threshold for participation in the CGP, and for the formula allocation under § 950.601, an existing rental, Mutual Help, or section 23 bond-financed unit under the ACC shall count as one unit; and a unit under the Turnkey III program shall count as one-fourth of a unit. An IHA that has already qualified to participate in the CGP because it owns or operates 250 or more units may elect to continue 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), and to Section 23 Leased Housing Bond-Financed developments, for which IHAs request assistance under the CIAP or CGP. This subpart also applies to the implementation of modernization programs which were approved before FFY 1992. Rental developments that are planned for conversion to homeownership under sections 5(h), 21, or 301 of the Act, but that have not yet been sold by an IHA, continue to qualify for assistance under this part. 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 under CIAP shall be used for the purposes for which the funding was provided, or for purposes consistent with an approved action plan submitted by the IHA under the CGP, as the IHA determines to be appropriate.

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

§ 950.601 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, \$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 so that it always begins with a \$75 million balance. Any unused funds from previous years will 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 § 950.667.

(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 § 950.603, 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 § 950.603, 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 § 950.669(b). 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.

§ 950.602 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, which 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 § 950.615 or § 950.666. 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.

§ 950.603 Modernization and energy conservation standards.

(a) All improvements funded under this subpart, which may include alterations, betterments, additions, replacements, or nonroutine maintenance, shall meet the HUD modernization standards, described in paragraph (b) of this section; comply with lead-based paint testing and abatement requirements in subpart H of this part; and provide decent, safe, and sanitary living conditions in IHA-owned and IHA-operated housing. All improvements funded under this part shall meet the HUD energy conservation standards for cost-effective energy conservation measures in such developments, described in paragraphs (c) and (d) of this section.

(b) The modernization standards are comprised of both mandatory and development-specific standards. The mandatory standards are intended to provide decent, safe, and sanitary living conditions in Indian housing, including corrections of violations of basic health and safety codes, and to address all deficiencies, including those related to deferred maintenance. The development-specific standards permit

an IHA to undertake improvements that are necessary or highly desirable for the long-term physical and social viability of a development, which includes site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards, and in other documents cited in the Handbook.

(c) The energy conservation standards are standards for the installation of cost-effective energy conserving improvements, including solar energy systems. The energy conservation standards provide for the conducting or updating of energy audits, including cost-benefit analyses of energy saving opportunities, in order to determine which measures will be cost effective in conserving energy. The energy conservation standards are contained in the HUD Workbook, Energy conservation for Housing, and in other documents cited in the Workbook.

(d) Life-cycle cost-effective energy performance standards established by HUD to reduce the operating costs of Indian housing developments over the estimated life of the buildings shall apply to developments modernized under this subpart. These standards are contained in HUD Handbook 7418.1, as revised, Life-Cycle Cost Analysis for Utility Combinations.

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

§ 950.609 Purpose.

The purpose of these sections under the undesignated heading "Comprehensive Improvement Assistance Program" (CIAP) is to set forth the policies and procedures for the CIAP under which IHAs that own or operate fewer than 250 units of Indian housing may receive financial assistance for the modernization of Indian housing developments, including Emergency and Other Modernization. Funding for this program is provided under section 5(c) of the Act (42 U.S.C. 1437c(c)), pursuant to section 14(k) of the Act (42 U.S.C. 14371(k)) (see § 950.601 for the formula allocation process for the aggregate of CIAP agencies under this subpart I).

§ 950.615 Eligible costs.

(a) *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 will reasonably ensure the long-term physical and social viability

of the development at a reasonable cost, as defined in § 950.102.

(b) *Physical improvement costs for rental and Mutual Help developments.* Eligible costs include alterations, betterments, nondwelling additions, replacements, and nonroutine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 950.603. The modernization standards include mandatory and development specific work. The mandatory standards may be exceeded only when the IHA and HUD determine that it is necessary or highly desirable for the long-term physical and social viability of the individual development. If demolition or disposition is proposed, the IHA shall comply with subpart M of this part. Additional dwelling space may be added to existing units.

(c) *Turnkey III developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items under Emergency Modernization or Other Modernization 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 lead-based paint testing, interim containment, professional risk assessment, and abatement. In addition, eligible costs include management improvements under the modernization type of Other Modernization.

(2) *Ineligible costs.* Nonroutine maintenance or replacements, dwelling additions, 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 (c)(1) of this section, an IHA may carry out Other Modernization in a Turnkey III development, whenever a Turnkey III unit becomes vacant or is occupied by a nonhomebuyer family. An IHA that intends to use funds under this paragraph shall identify in its CIAP application the estimated number of units proposed for Other Modernization and subsequent sale. In addition, an IHA shall certify that the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of this part, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed for Other Modernization.

(ii) Before an IHA may be approved for Other Modernization of a unit under this paragraph, it shall first deplete any Earned Home Payments Account

(EHPA), or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum operating subsidy. Any increase in the value of a unit caused by its Other Modernization under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its purchase price.

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

(1) Demolition of dwelling units or nondwelling facilities, for which HUD has approved the demolition 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 nondwelling use.

(e) *Management improvement costs.* (1) *General.* Management improvements that are development-specific or IHA-wide in nature are eligible costs if needed to upgrade the operation of the IHA's developments, sustain physical improvements at those developments, or correct management deficiencies. Management improvements and planning costs may be funded as a single modernization project.

(2) *Ineligible costs.* An IHA's ongoing operating expenses, including direct provision of social services through either contract or force account labor, are ineligible management improvement costs. In addition, if an approved modernization program includes management improvements that involve ongoing costs, HUD is not obligated to provide continued funding or additional operating subsidy after the end of the implementation period of the management improvements. An IHA is responsible for finding other funding sources, reducing its ongoing management costs, or terminating the management activities.

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

(i) *General management costs.* Eligible general management costs include, but are not limited to: management, financial, and accounting control systems of the IHA, rent collection, and maintenance.

(ii) *Economic development costs.* Economic development activities, such as job training and resident employment, for the purpose of carrying out activities related to the eligible management and physical improvements are eligible costs, as approved by HUD. HUD encourages IHAs, to the greatest extent feasible, to hire residents as trainees, apprentices,

or employees to carry out the modernization program under this subpart I.

(iii) *Resident management costs.* Technical assistance to a resident council or resident management corporation (RMC), as defined in subpart O of this part, in order to determine the feasibility of the resident management entity or assist in its formation is an eligible cost.

(iv) *Resident homeownership costs.* The study of the feasibility of converting rental to homeownership units, as well as the preparation of an application for conversion to homeownership, is an eligible cost.

(f) *Drug elimination costs.* Drug elimination activities involving management or physical improvements are eligible costs, as specified by HUD.

(g) *Administrative costs.* Administrative costs necessary for the planning (planning costs can be funded as a single modernization project), design, implementation, and monitoring of the physical and management improvements are eligible costs, and include the following:

(1) The salaries of nontechnical and technical IHA personnel assigned full-time or part-time to modernization are eligible costs only if the scope and volume of the work are beyond that which could reasonably be expected to be accomplished by such personnel in the performance of their nonmodernization 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 or operating budget);

(2) IHA contributions to employee benefit plans on behalf of nontechnical and technical IHA personnel are eligible costs in direct proportion to the amount of salary charged to the CIAP; and

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

(h) *Architectural/engineering and consultant fees.* Fees for planning, preparation of needs assessments, and other required documents, detailed design work, assistance in the preparation of construction and bid documents, lead-based paint professional risk assessments and testing are eligible costs.

(i) *Relocation and moving costs.* Relocation and other relocation assistance for permanent and temporary relocation are eligible costs, when this assistance is required by § 950.117.

(j) *Cost limitations.* (1) *Management improvements.* Management improvement costs shall not exceed 10

percent of the CIAP funds available to an Area ONAP in a particular FFY.

(2) *Planning costs.* Planning costs are costs 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 lead-based paint professional risk assessment and testing. Planning costs may be funded as a single modernization project. 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 five percent of the CIAP funds available to an Area ONAP in a particular FFY.

(3) *Program benefit.* If the physical or management improvement will benefit programs other than Indian Housing, such as Section 8, local renewal, eligible costs are limited to the amount directly attributable to the Indian Housing Program.

(k) *Ineligible costs.* An IHA shall not make luxury improvements, or carry out any other ineligible activities, as specified by HUD.

§ 950.618 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 applications.

(b) *IHA consultation with local officials and residents/homebuyers.* An IHA shall develop the application in consultation with local officials, residents, and homebuyers, as set forth in § 950.624.

(c) *IHA application.* An IHA shall submit to HUD an application, in a form prescribed by HUD, which shall include:

(1) A general description of IHA development(s) (including the current physical condition, for each development for which the IHA is requesting funds, or for all the IHA's developments) and physical and management improvement needs (to meet the Secretary's standards in § 950.603), general description of major work categories (e.g., kitchens, bathrooms) required to correct identified deficiencies and estimated costs, including a statement concerning consultation with local officials and residents and viability of the development(s). The application will also identify a cost estimate for the

equipment systems or structural elements that would normally be replaced over the remaining period of the annual contributions contract or during the 30-year period beginning on the date of submission of the application.

(2) For management improvements, the application shall identify the management improvement need, including a general description of the work required for correction and an estimated cost. Management areas for which needs should be identified include, but are not limited to, the following:

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

(ii) The adequacy and qualifications of personnel employed by such IHA (in the management and operation of such developments) for each category of employment; and

(iii) The adequacy and efficacy of resident programs and services in such developments, the security of each such development and its residents, policies and procedures of the IHA for the selection and eviction of residents in such developments, and other policies and procedures of such IHA relating to such developments, as specified by the Secretary; and

(3) Any other documents, as may be required by HUD.

(d) *Completeness review.* To be eligible for selection, an application shall be received by the Area ONAP within the time period specified in the NOFA and shall be complete. In order to determine whether an application is complete, responsive to the NOFA, and acceptable for technical processing, the Area ONAP shall perform an initial completeness review upon receipt of the application. To make the above determination, the Area ONAP shall use the following criteria:

(1) The application was received by HUD at the appropriate address by the date and time specified in the NOFA and was complete and responsive (excluding exhibits that are certifications); or

(2) If an application is determined to be incomplete or to have missing certifications, the IHA shall be advised in writing of any deficiencies or any inconsistencies. The missing information is to be submitted 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 those such as inadvertently omitted documents, clarifications of previously submitted material, and other changes that are not of such a nature as to improve the

competitive position of the application. The IHA shall acceptably correct deficiencies (including furnishing missing certifications) within the time specified in the NOFA.

(e) *Eligibility review.* (1) *Eligibility for processing.* To be eligible for processing, based on the general description of its developments' condition and general statement of physical and management improvement needs, and the Area ONAP's knowledge of the development's conditions, the work items, particularly emergency work items, shall appear to be eligible and needed.

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

(i) Where the IHA owes funds to HUD as a result of excess development, modernization, or operating funds previously provided, and the IHA has not repaid the funds or has not entered into a repayment agreement, or is not meeting its obligations under a repayment agreement, the IHA is eligible for processing for Emergency Modernization only.

(ii) Where the IHA has not complied with Fair Housing and Equal Opportunity (FHEO) requirements as set forth in § 950.115, as evidenced by an action, finding, or determination as described in paragraphs (e)(2)(ii)(A) through (E) of this section, unless the IHA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance, the IHA is eligible for processing only for Emergency Modernization or for work needed to remedy civil rights deficiencies.

(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 HUD's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the IHA, referred by HUD'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, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(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) and § 950.115, the Attorney General's Guidelines (28 CFR 50.3) and HUD's title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities under § 950.115 in a civil action filed against the IHA by a private individual, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(3) *FHEO Division review.* The processing office shall request the appropriate FHEO Division of the Regional Office to identify any IHAs with equal opportunity-related problems. After consulting with Regional FHEO, as appropriate, and reviewing its own files, the FHEO Division shall identify each IHA by the following categories and provide any other relevant information within the requested time frame:

(i) There are no known equal opportunity-related problems;

(ii) There are known equal opportunity-related problems, as identified; or

(iii) There are circumstances as set forth in paragraph (e)(2) of this section.

(f) *Technical processing.* When an application is determined to be complete and responsive to the NOFA and eligible for processing, technical processing, consisting of the following, shall be accomplished:

(1) The Area ONAP 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. The IHA only needs to submit one application that includes needs that the Area ONAP will process under Group 1 or Group 2. However, the IHA can submit Emergency Modernization applications whenever needed. Group 2 developments are subject to the long-term viability and reasonable cost analysis. Preference will be given to IHAs that request assistance for developments having conditions that threaten the health or safety of the residents or having a significant number of vacant, substandard units; and that have demonstrated a capability of carrying out the activities proposed. Within Group 2, the Secretary may give

priority to compliance with statutory, regulatory, and court-ordered deadlines.

(2) The Area ONAP will evaluate the Group 2 IHAs and developments to determine eligibility and acceptability based on the technical review factors in paragraph (g) of this section. Based on these factors, the Area ONAP shall determine the applications that, in its judgment, are approvable. Selections then shall be made in accordance with paragraph (h) of this section.

(g) *Technical review factors.* The technical review factors for assistance include:

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

(2) Extent of vacancies;

(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) Local government support for proposed modernization; and

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

(h) *Rating and ranking.* The Area ONAP shall rate and rank each application in Group 2 on the basis of its assessment of the application using the technical review factors set forth in paragraph (g) of this section and in the NOFA. The Area ONAP shall identify for joint review selection the highest IHA ranking applications in Group 2 in descending order 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 would be automatically selected for joint review.

(i) *Joint review.* HUD shall notify each IHA whose application has 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). The purpose of the joint review is to discuss the proposed modernization program, as set forth in the application, and determine the size of the grant, if any, to be awarded. If the IHA has not included all its developments in the CIAP application, HUD may not, as a

result of joint review, consider funding any nonemergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. An IHA shall prepare for the joint review by preparing a draft CIAP budget, and reviewing the other items to be covered during the joint review, as prescribed by HUD. If conducted on-site, the 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 nonselection.

(j) *HUD awards.* Upon completion of the joint review, HUD shall adjust the amounts to be awarded, as necessary, based on information obtained at Joint Review, including the information received as a result of the FHEO review and completion of the environmental review, and announce the IHAs selected for CIAP grants (subject to their submission of an approvable CIAP budget and any other required documents). HUD would request the funded IHA to submit a CIAP budget, including an implementation schedule, a resolution by the IHA Board of Commissioners (approving the CIAP budget and containing certifications required by HUD), and any other necessary documents.

(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 requisition 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). 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.* 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.

§ 950.624 Resident and homebuyer participation.

(a) *Resident participation.* For a rental development only, the IHA shall establish a Partnership Process, as defined in § 950.102, to develop, implement, and monitor the CIAP. Before submission of the application, an IHA shall consult with the residents, the

resident organization, or the RMC (see subpart O of this part) of the development being proposed for modernization regarding its intent to submit an application for CIAP funds. An IHA shall give residents a reasonable opportunity to present their views on the proposed modernization program and alternatives to it, and give full and serious consideration to resident recommendations. An IHA shall respond in writing to the residents, the resident organization, or the RMC, 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, the resident organization, or the RMC of the approved work items and its progress during implementation. If HUD does not approve the modernization program, an IHA shall so inform the residents, the resident organization, or the RMC.

(b) *Homebuyer participation: Turnkey III and Mutual Help.* For a homeownership development only, before submission of the application, an IHA shall consult with the homebuyer families of the development proposed for modernization regarding its intent to submit an application for CIAP funds. An IHA shall give the homebuyer families a reasonable opportunity to present their views on the proposed modernization program and alternatives to it, and give full and serious consideration to their recommendations. An IHA shall respond in writing to the homebuyer families, indicating its acceptance or rejection of their 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 homebuyer families of the approved work items and its progress during implementation. If HUD does not approve the modernization program, an IHA shall so inform the homebuyer families.

§ 950.635 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 in a timely, efficient, and economical manner, subject to the following requirement. An IHA shall ensure that there is no duplication between the activities carried out with CIAP funds and the activities carried out with other funds.

§ 950.639 Fund requisitions.

An IHA shall requisition modernization funds against the approved CIAP budget in accordance with procedures prescribed by HUD.

§ 950.642 Contracting requirements.

An IHA shall comply with the prevailing wage rate requirements in §§ 950.120 and 950.172, as well as the Indian Preference requirements in § 950.175. In addition, an IHA shall comply with State, tribal, and local laws and Federal requirements, as set forth in 24 CFR part 85, except as follows:

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

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

(2) If the proposed contract amount does not exceed the HUD-established threshold, certify that the scope of work is consistent with any agreements reached with HUD, and that the amount is appropriate and does not exceed the HUD-approved CIAP budget amount.

(b) *Assurance of completion.* For each construction contract over \$25,000, the contractor shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h), a 20 percent cash escrow, or a 25 percent letter of credit or, as may be required by law, separate performance and payment bonds, each for 50 percent or more of the contract price.

(c) *Construction solicitations.* Notwithstanding 24 CFR 85.36(g), an IHA shall comply with HUD requirements to either:

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

(2) If 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.* An IHA shall obtain HUD approval of the proposed award of a contract if the award exceeds the HUD-approved CIAP budget amount 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:

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

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

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

(e) *Contract modifications.*

Notwithstanding 24 CFR 85.36(g), except in an emergency endangering life or property, an IHA shall comply with HUD requirements to either:

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

(2) If 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 latest HUD-approved CIAP budget or otherwise approved by HUD.

(f) *Construction requirements.* An IHA may be required to submit to HUD periodic progress reports and construction completion documents for prior HUD approval above a HUD-specified amount.

(g) *Previous participation.* An IHA shall ensure that the contractor is not on the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

§ 950.645 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.

§ 950.648 Budget revisions.

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 (within the total approved CIAP budget) to incur modernization costs in excess of the approved CIAP budget amount for any development. An IHA also shall comply with HUD requirements to either:

(a) Submit the proposed CIAP budget revision for prior HUD approval if the

IHA plans to delete or substantially revise approved work items, add new work items, or incur modernization costs in excess of the HUD-established threshold; or

(b) Certify that the revisions are necessary to carry out the approved work and do not result in the approved CIAP budget amount for any development being exceeded.

§ 950.651 Progress reports.

For each six-month period, beginning October 1, until completion of the modernization program or expenditure of all funds, an IHA shall submit a 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. The report shall include:

(a) Modernization fund obligations and expenditures and progress against the approved implementation schedule(s); and

(b) Management improvement progress, as applicable.

§ 950.654 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. Where deficiencies are noted, an IHA shall take corrective action, as directed by HUD.

§ 950.657 Fiscal closeout.

Upon completion or termination of a modernization program, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. An IHA shall immediately remit any excess funds provided by HUD. The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate indicates that there are still excess funds, an IHA shall immediately remit the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized or ineligible expenditures, 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)

§ 950.660 Purpose.

(a) The purpose of the Comprehensive Grant Program (CGP) under this subpart I is:

(1) To provide modernization assistance to IHAs that own or operate a total of 250 or more units of Indian Housing on a reliable and more predictable basis; to enable them to operate, upgrade, modernize, and rehabilitate Indian housing developments; to ensure their continued availability for low-income families as decent, safe, and sanitary housing;

(2) To provide considerable discretion to IHAs to decide the specific improvements, the manner of their execution, and the timing of the expenditure of funds;

(3) To simplify significantly the program of Federal assistance for capital improvements in Indian housing developments;

(4) To provide increased opportunities and incentives for more efficient management of Indian housing developments; and

(5) To give IHAs greater control in planning and expending funds for modernization, rehabilitation, maintenance, and improvement of Indian housing developments to benefit low-income families.

(b) The purpose of the sections under the undesignated heading "Comprehensive Grant Program" (CGP) is to set forth the policies and procedures for the CGP under which IHAs that own and operate a total of 250 or more units of Indian housing receive financial assistance on a formula grant basis in accordance with § 950.601(e) and (f) for the modernization of Indian housing developments.

§ 950.666 Eligible costs.

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

(1) Undertaking activities described in its approved Five-Year Plan under § 950.672(d)(5);

(2) 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 Submission;

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

(4) Preparing the Comprehensive Plan and Action Plan under § 950.672, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation, and monitoring process; and

(5) Carrying out an audit, in accordance with 24 CFR part 44 and § 950.120.

(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 demonstrated that completion of the improvements and replacements identified in the Comprehensive Plan will reasonably ensure the long-term physical and social viability of the development at a reasonable cost or for essential nonroutine maintenance needed to keep the property habitable until residents are relocated.

(c) *Physical improvement costs.*

Eligible costs include alterations, betterments, additions, replacements, and nonroutine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 950.603. These mandatory standards may be exceeded only when the IHA determines that it is necessary or highly desirable for the long-term physical and social viability of the individual development. If demolition or disposition is proposed, the IHA shall comply with subpart M of this part. Additional dwelling space may be added to existing units.

(d) *Costs for 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, and lead-based paint testing and abatement. In addition, management improvements are eligible modernization costs for existing Turnkey III developments.

(2) *Ineligible costs.* Nonroutine maintenance or replacements, additions, 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. An IHA that intends to use funds under this paragraph shall identify in its needs assessment the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale. In addition, an IHA shall demonstrate in its needs assessment that the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 950, Subpart G, and who 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 the substantial rehabilitation of a unit under this paragraph, it shall 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 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 nondwelling facilities 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.

(f) *Replacement reserve costs.* (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;

(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 percent limit for management improvements (except as provided in paragraph (m)(1) 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 shall 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 shall first use its replacement reserve, if funded, to meet emergency needs, before requesting funds from the \$75 million reserve. An IHA is not required to use its replacement reserve for natural and other disasters.

(g) *Management improvement costs.* Management improvements that are needed to upgrade the operation of the

IHA's developments, sustain physical improvements at those developments, or correct management deficiencies identified by the IHA in its Comprehensive Plan are eligible costs. An IHA's ongoing operating expenses, including direct provision of social services through either contract or force account labor, are ineligible management improvement costs.

(1) *Economic development activities costs.* Economic development activities such as job training, resident employment, and resident businesses, for the purpose of carrying out activities related to the eligible management and physical improvements are eligible costs, as approved by HUD. HUD encourages IHAs, to the greatest extent feasible, to hire residents as trainees or employees to carry out the modernization program under this subpart, and to contract with resident-owned businesses for modernization work.

(2) *Resident management costs.* Technical assistance to a resident organization or resident management corporation (RMC), as defined in § 950.962, in order to determine the feasibility of the resident management entity or assist in its formation is an eligible cost.

(3) *Resident homeownership costs.* The study of the feasibility of converting rental to homeownership units, as well as the preparation of an application for conversion to homeownership, is an eligible cost.

(h) *Drug elimination costs.* Drug elimination activities involving management or physical improvements are eligible costs, as specified by HUD.

(i) *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) The salaries of nontechnical and technical IHA personnel assigned full-time or part-time to modernization are eligible costs only if 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 nonmodernization duties. The 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 budgets);

(2) IHA contributions to employee benefit plans on behalf of nontechnical and technical IHA personnel are eligible costs in direct proportion to the amount of salary charged to the CGP; and

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

(j) *Audit costs.*

(k) *Architectural/engineering and consultant fees.* Fees for planning, preparation of needs assessments and required documents, detailed design work, preparation of construction and bid documents, lead-based paint testing, etc., are eligible costs.

(l) *Relocation costs.* Relocation costs as a direct result of rehabilitation, demolition, or acquisition for a CGP-funded activity are eligible costs, as required by § 950.117.

(m) *Cost limitation.* (1)

Notwithstanding the full fungibility of work items in § 950.675(c), 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.

(2) Notwithstanding the full fungibility of work items in § 950.675(c), 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 State, tribal, or local law, unless specifically approved by HUD;

(3) When the physical or management improvement will benefit programs other than Indian Housing, such as Section 8, local renewal, etc., eligible costs are limited to the amount directly attributable to the Indian Housing Program.

(n) *Ineligible costs.* An IHA (or an RMC acting on behalf of an IHA) shall not make luxury improvements, or carry out any other ineligible activities, as specified by HUD.

§ 950.667 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 § 950.601(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 § 950.601(e) and (f), other unobligated modernization

funds, and its replacement reserves under § 950.666. An IHA is not required to have an approved Comprehensive Plan under § 950.672 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 § 950.601(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 § 950.601(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 § 950.601(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 § 950.672

before it can request assistance from the reserve under § 950.601(b).

(2) *Procedure.* To obtain funding for natural or other disasters under § 950.601(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 shall be in the form of a grant, and are not required to be repaid.

§ 950.669 Allocation of assistance.

(a) *Submission of 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 § 950.601(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 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 30 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. 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.

(b) *HUD notification of formula amount; appeal rights.* (1) *Formula amounts notification.* After HUD determines an IHA's formula allocation under § 950.601(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 §§ 950.672(a) and 950.678;

(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.

(d) *Obligation of formula funding.* All formula funding should be obligated within two years of approval. However, due to the size of the grant, complexity of the work, and other factors, the IHA may propose, and HUD may approve, a longer time period.

§ 950.672 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 § 950.669(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 with democratically elected resident groups, shall 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, duly elected resident organizations, local 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, local government officials, and other interested parties.

(c) *Local government participation.* An IHA shall consult with appropriate 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.

(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 § 950.666. 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. Each Comprehensive Plan shall contain the following elements:

(1) *Summaries.* An IHA shall include as part of its Comprehensive Plan the following summaries:

(i) A summary of total preliminary estimated costs to address physical needs by each development and management needs IHA-wide; 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 issue. 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 section 14(e)(1)(A)(ii) of 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 standards contained in HUD Handbook 7485.2 (Public and Indian Housing Modernization Standards), and to the energy conservation and life-cycle cost-effective performance standards, as required in § 950.603, to comply with the Lead-Based Testing and Abatement requirements under § 950.120(g). The IHA should also 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 shall so indicate. Similarly, if the IHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development), it shall 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) The projected FFY in which the IHA anticipates that the development will meet the modernization and energy conservation standards;

(E) 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 § 950.666(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)(3), 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 (d)(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;

(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; and

(E) The projected FFY in which the IHA anticipates that all identified management deficiencies will be corrected.

(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 this paragraph, 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 (d)(2) and (d)(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 may choose to use the 90 percent of Total Development Cost (TDC) approach (the preliminary estimate of hard costs for work proposed at the development is 90 percent or less of TDC) or a cost reasonableness approach related to the cost of individual work items as

indicated by National cost indices, adjusted by local conditions and the IHA's own recent procurement experience. The IHA shall keep documentation in its files to support its reasonable cost determinations of each major work item (e.g., kitchen cabinets, exterior doors). HUD 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;

(ii) *Determination of non-viability.*

When an IHA's analysis of a development, under paragraph (d) 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 24 CFR part 950, subpart M).

(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 (d)(2) and (d)(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 State, local, and tribal 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 shall 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 shall 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 addition, an IHA shall estimate the FFY in which it anticipates that the development will meet the modernization and energy conservation standards. 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 timeframes; 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);

(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) *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 § 950.672(b) and (c);

(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 adopted by the IHA Board of Commissioners, and signed by the Board Chairman of the IHA, approving the Comprehensive Plan or any amendments thereto and certifying that:

(i) The IHA will comply with all policies, procedures, and requirements prescribed by HUD for modernization, including implementation of the modernization in a timely, efficient, and economical manner;

(ii) IHA has established controls to assure that any activity funded by the CGP is not also funded by any other HUD program, thereby preventing duplicate funding of any activity;

(iii) The IHA will not provide to any development more assistance under the CGP than is necessary to provide affordable housing, after taking into account other government assistance provided;

(iv) The proposed physical work will meet the modernization and energy conservation standards under § 950.603;

(v) The proposed activities in the Five-Year Action Plan/Annual Statement are consistent with the proposed or approved Comprehensive Plan of the IHA;

(vi) The IHA will comply with applicable civil rights requirements under § 950.115, and, when applicable, will carry out the Comprehensive Plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(vii) The IHA will, to the greatest extent feasible, give preference to the award of modernization contracts to Indian organizations and Indian-owned economic enterprises under § 950.175;

(viii) The IHA has provided to HUD any documentation that HUD has requested to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in

accordance with 24 CFR 950.120(a) and (b), and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Statement, until the IHA receives written notification from HUD indicating that HUD has complied with its responsibilities under NEPA and other related authorities;

(ix) The IHA will comply with the wage rate requirements under § 950.120(c) and (d);

(x) The IHA will comply with the relocation assistance and real property acquisition requirements under § 950.117;

(xi) The IHA will comply with the requirements for physical accessibility under § 950.115(d);

(xii) The IHA will comply with the requirements for access to records and audits under § 950.120(e);

(xiii) The IHA will comply with the uniform administrative requirements under § 950.120(f);

(xiv) The IHA will comply with lead-based paint testing and abatement requirements under § 950.120(g);

(xv) The IHA has complied with the requirements governing tribal government and resident participation in accordance with §§ 950.672(b), 950.678(d), and 950.684, and has given full consideration to the priorities and concerns of tribal government and residents, including comments that were ultimately not adopted, in preparing the Comprehensive Plan/Five-Year Action Plan and any amendments thereto;

(xvi) The IHA will comply with the special requirements of § 950.666(d) with respect to a homeownership development; and

(xvii) The IHA will comply with section 3 of the Housing and Urban Development Act of 1968, as amended, and make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low- and very low-income persons, training and employment opportunities generated by CGP assistance, and to make best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with CGP assistance to business concerns that provide economic opportunities for low- and very low-income persons.

(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 § 950.678(b)), or at any other time. These amendments shall be reviewed by HUD in accordance with § 950.675;

(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 § 950.672(d)(7).

(f) *Prerequisite for receiving assistance.* (1) *Prohibition of assistance.* No financial assistance, except for emergency work to be funded under §§ 950.601(b) and 950.666(a)(2), and for modernization needs resulting from disasters under § 950.601(b), may be made available under this subpart unless HUD has approved a Comprehensive Plan submitted by the IHA that meets the requirements of § 950.672. 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 IHAs and PHAs participating in the CGP in accordance with the formula under § 950.601(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 if HUD has not approved an IHA's Comprehensive Plan. To request such assistance, an 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.

§ 950.675 HUD review and approval of Comprehensive Plan (including 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 § 950.672(d); 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 950.601 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) The Comprehensive Plan is incomplete in significant matters. HUD determines that the IHA has failed to include all required information or documentation in its Comprehensive Plan, e.g. the physical needs assessment does not provide all of the information required by HUD concerning all of its developments; or the IHA has supplied incomplete data on the current condition and other characteristics of its developments;

(ii) Identified needs are plainly inconsistent with facts and data. On the basis of available significant facts and data pertaining to the physical and operational condition of the IHA's developments or the management and operations of the IHA, HUD determines that the IHA's identification of modernization needs (see § 950.672(d)(2) and (3)) is plainly inconsistent with such facts and data. HUD will take into account facts and data such as those derived from recent HUD monitoring, audits, and resident comments and will disapprove a Comprehensive Plan based on such findings as:

(A) Identified physical improvements and replacement are inadequate. The completion of the identified physical improvements and replacements will not bring all of an IHA's developments to a level at least equal to the modernization and energy conservation and life-cycle cost-effective standards in § 950.603 (except that a development shall meet the energy conservation standards under § 950.603 only when they are applicable to the work being performed);

(B) Identified management improvements are inadequate. The identified management and operations improvement needs do not address all of an IHA's areas of deficiency, or the completion of those improvements would not result in each area of deficiency under an IHA's management improvement plan under § 950.135 being brought up to an acceptable level of performance; and

(C) Proposed physical and management improvements fail to address identified needs. The proposed physical and management improvements in the action plan are not related to the identified needs in the needs assessments portion of the Comprehensive Plan, e.g., a heating plant renovation is in the action plan, but it was not included in the needs assessment for that development.

(iii) Action plan is plainly inappropriate to meeting identified needs. On the basis of the Comprehensive Plan, HUD determines that the action plan (see § 950.672(d)(5)) is plainly inappropriate to meet the needs identified in the Comprehensive Plan, e.g., the proposed work item will not correct the need identified in the needs assessment. HUD will take into account the availability of funds. In addition, HUD will take into account whether the action plan fails to address work items that are needed to correct known emergency conditions or that are otherwise needed to meet statutory or other legally mandated requirements, as identified by the IHA in its Comprehensive Plan.

(iv) Inadequate demonstration of long-term viability at reasonable cost. HUD determines that the IHA has failed to demonstrate that completion of improvements and replacements identified in the Comprehensive Plan, as required by § 950.672(d)(2) and (3), will reasonably ensure long-term viability of one or more Indian housing developments to which they relate at a reasonable cost, as required by § 950.672(d)(4).

(v) Contradiction of local government statement or IHA resolution. HUD has evidence that tends to challenge, in a

substantial manner, the appropriate governing body's statement or IHA resolution contained in the Comprehensive Plan, as required in § 950.672(d)(6) and (7). Such evidence may include, but is not necessarily limited to:

(A) Evidence that the IHA failed to implement the Partnership Process and to meet the requirements for resident participation, as set forth in § 950.672(b). In such cases, HUD shall review the IHA's resident participation process and any supporting documentation to determine whether the standards for participation under § 950.672(b) were met;

(B) With respect to an IHA established under State law and determined to be subject to the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601-3619), HUD shall also consider as such evidence the following:

(1) A pending proceeding against the IHA based upon a charge of discrimination pursuant to the Fair Housing Act. (For purposes of this provision, "a charge of discrimination" means a charge, pursuant to section 810(g)(2) of the Fair Housing Act (42 U.S.C. 3610(g)(2)), issued by the HUD General Counsel, or his or her legally authorized designee.);

(2) A pending civil rights suit against the IHA instituted by the Department of Justice;

(3) Outstanding HUD findings, under § 950.120, of IHA noncompliance with civil rights statutes and executive orders or implementing regulations, as a result of formal administrative proceedings, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(4) 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), the Attorney General's Guidelines (28 CFR 50.3), and HUD's title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's section 504 regulations (24 CFR 8.57); or

(5) An adjudication of a violation under any of the authorities under § 950.120(a) in a civil action filed against the IHA by a private individual, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(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 § 950.684. 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 § 950.687. 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.

§ 950.678 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 § 950.669(b)(1) 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 § 950.672(d)(5)(i). 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 § 950.672(e), 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. In general, HUD expects that an IHA will obligate its current year's allocation of CGP funds (except for its funded replacement reserves) within two years, and expend such funds within three years, of the date of HUD approval, unless longer time-frames are approved by HUD due to the size of the grant, the complexity of the work, and other factors;

(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 § 950.672(d)(7).

(f) *Additional submissions with Annual Submission.* An IHA shall submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 950.672(e), 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 § 950.675(b).

(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 § 950.684. 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 § 950.687 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 § 950.687(a)(2) 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 to obtain 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.

§ 950.681 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved a Five-Year Action Plan and entered into an ACC amendment with the IHA, the IHA shall undertake in a timely, efficient, and economical manner the modernization activities and expenditures set forth in its approved Annual Statement or substitute work categories from within the approved Five-Year Action Plan, subject to the following requirements:

(1) The IHA may undertake the activities using force account or contract labor, including contracting with an RMC. If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by an RMC, the IHA shall not retain for any administrative or other reason, any portion of the CGP funds provided, unless the IHA and the RMC provide otherwise by contract; and

(2) All activities shall be monitored by resident groups within the framework and intent of the Partnership Process.

(b) *Fund requisitions.* To request modernization funds against the

approved Annual Statement for year one, the IHA shall comply with requirements prescribed by HUD.

(c) *Contracting requirements.* The IHA shall comply with the wage rate requirements in § 950.120. In addition, the IHA shall comply with the requirements set forth in subpart B of this part, except as follows:

(1) *Assurance of completion.* For each construction or equipment contract over \$25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price, or, notwithstanding 24 CFR 85.36(h) and § 950.170, a 20 percent cash escrow, or a 25 percent letter of credit, or, as may be required by law, separate performance and payments bonds, each for 50 percent or more of the contract price.

(2) *Previous participation.* An IHA shall ensure that the contractor is not on the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(d) *Assurance of nonduplication.* The IHA shall ensure that there is no duplication between the activities carried out pursuant to the CGP, and activities carried out with other funds.

(e) *Fiscal closeout of a comprehensive grant.* Upon expenditure by an IHA of all funds, or termination by HUD of the activities funded by each annual grant, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. The audit shall follow the guidelines prescribed by 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD may direct.

§ 950.684 IHA Performance and Evaluation Report.

(a) *Submission.* 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.

(b) *Content.* The report shall include the following:

(1) An explanation of how the IHA has used other funds, such as Community Development Block Grant program assistance, State or tribal assistance, and private funding, for the needs identified in the IHA's Comprehensive Plan and for the purposes of this subpart I;

(2) An explanation of how the IHA has used the CGP funds to address the needs identified in its Comprehensive Plan and to carry out the activities identified in its approved Five-Year Action Plan, and shall specifically address:

(i) Any funds used for emergency needs not set forth in its Five-Year Action Plan; and

(ii) Any changes to the Annual Statement under § 950.678(h);

(3) The results of the IHA's process for consulting with residents on the implementation of the plan;

(4) The current status of the IHA's obligations and expenditures, specifying how the IHA is performing with respect to its implementation schedules, and an explanation of any necessary revision to the planned target dates;

(5) A summary of resident, tribal, or local government comments received on the report; and

(6) A resolution by the IHA Board of Commissioners approving the Performance and Evaluation Report and containing a certification that the IHA has made reasonable efforts to notify residents in the development(s) and local government officials of the opportunity to review the draft report and to comment on it before its submission to HUD, and that copies of the report were provided to residents in the development office and to local government officials, or furnished upon their request.

§ 950.687 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, 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 in a timely manner and in accordance with its Comprehensive Plan.

(i) In making this determination, HUD will review the IHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved Five-Year Action Plan. HUD will also review an IHA's progress against the

implementation schedules for purposes of determining whether the IHA has carried out its modernization activities in a timely manner;

(ii) HUD will review an IHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that the work carried out meets the modernization and energy conservation standards in § 950.603, this part, and other applicable laws and regulations.

(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.

(i) The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity are those described in paragraphs (a)(1) and (a)(3) of this section as they relate to carrying out the Comprehensive Plan. HUD generally will consider an IHA to have a continuing capacity if it determines that the IHA has:

(A) Carried out its activities under the CGP program, as well as the CIAP, in a timely manner, taking into account the level of funding available and whether the IHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period as approved by HUD or as extended by the IHA for reasons outside of its control;

(B) Adequately inspected the funded modernization to assure that the physical work is being carried out in accordance with the plans and specifications and the modernization and energy conservation standards (or in the case of an IHA's performance under CIAP, whether the IHA has carried out the physical work in accordance with the HUD-approved budget and in conformance with the modernization and energy conservation standards) and that any HUD monitoring findings relating to the quality of the physical work have been, or are being, resolved);

(C) Established and maintained internal controls for its modernization program in accordance with HUD requirements for financial management and accounting, as determined by the fiscal audit;

(D) Administered its modernization contracts in accordance with a HUD-approved procurement policy, which

meets the requirements of 24 CFR 85.36(a) and § 950.160;

(E) Carried out its activities in accordance with its Comprehensive Plan and HUD requirements; and

(F) Has satisfied, or made reasonable progress toward satisfying, the performance standards prescribed in paragraph (a)(3) of this section as they relate to activities under the CGP program;

(ii) HUD will give particular attention to IHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

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

(i) With respect to the physical condition of each development, whether the work items being carried out by the IHA are in conformity with the modernization and energy conservation standards in § 950.603, and whether the IHA has brought, or is making reasonable progress toward bringing, all of its developments to these standards, in accordance with its physical needs assessment; and

(ii) With respect to the management condition of the IHA, whether the IHA has achieved, or is making reasonable progress in implementing, the work items (specified in its Annual Statement and Five-Year Action Plan) that are designed to address deficiencies identified in its management needs assessment or through audits or HUD reviews; and

(iii) In determining whether the IHA has made reasonable progress, HUD will take into account the level of funding available and whether the IHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if approved by HUD or extended by the IHA for reasons outside of its control in an implementation schedule. The IHA shall demonstrate to HUD's satisfaction that any lack of timeliness (beyond the time periods specified in this paragraph or date specified in a HUD-approved implementation schedule) has resulted from factors beyond the IHA's control. 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 this section and the IHA failed to comply with the order. HUD could then require an alternative management strategy in a correction 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.

(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 in 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 this paragraph (c), 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 § 950.684;

(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 specified 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 an 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 § 950.669(d)); 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 § 950.601.

(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 § 950.687(h). Any reallocation of recaptured amounts will be in accordance with § 950.687(g). The IHA's board of Commissioners shall notify affected residents of HUD's final determination to recapture any funds.

Subpart J—Operating Subsidy

§ 950.701 Purpose and applicability.

(a) *Implementation of section 9(a).*
(1) The purpose of this subpart is to establish standards and policies for the distribution of operating subsidy in accordance with section 9(a) of the United States Housing Act of 1937 (42 U.S.C. 1437g(a)). Section 9(a) authorizes the Secretary of Housing and Urban Development (HUD) to make annual contributions for the operation of IHA-owned rental housing (operating subsidy).

(2) This subpart establishes standards for the cost of providing comparable services as determined in accordance with a formula representing the operations of a prototype well-managed project, taking into account the character and location of the project and the characteristics of the families served. These standards, policies, and procedures are called the Performance Funding System (PFS), as described in this subpart J. The provisions of PFS are intended to recognize and give an incentive for efficient and economical management and to avoid the expenditure of federal funds to compensate for excessive costs attributable to poor or inefficient management. PFS is intended to provide the incentive and financial discipline for excessively high-cost IHAs to improve their management efficiency.

(b) *Applicability.* This subpart is applicable to all IHA-owned rental units under Annual Contributions Contracts. This subpart J is not applicable to the

Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, the Mutual-Help Program, or the Turnkey III Homeownership Opportunity Program. Provisions regarding an operating subsidy for the homeownership programs are found in the applicable subpart of this rule (subpart E of this part for Mutual Help, and subpart G of this part for Turnkey III).

§ 950.705 Determination of amount of operating subsidy under PFS.

The amount of operating subsidy for which each IHA is eligible shall be determined as follows: The projected operating income level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per-unit per-month dollar amounts, and shall be multiplied by the Unit Months Available. Transition funding, if applicable, and other costs as specified in paragraphs (b) through (e) of § 950.720 are then added to this total in order to determine the total amount of operating subsidy for the requested budget year, exclusive of consideration of the cost of an independent audit. As an independent operating subsidy eligibility factor, an IHA may receive operating subsidy in an amount, approved by HUD, equal to the actual or estimated cost of the independent audit to be prorated to operations of the IHA-owned rental housing (under § 950.720(a)). (See § 950.730 regarding adjustments.)

§ 950.710 Computation of Allowable Expense Level.

The IHA shall compute its Allowable Expense Level (AEL) using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes payments in lieu of taxes (PILOT) required by a Cooperation Agreement, even if PILOT is not included in the approved operating budget for the base year because of a waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the IHA's operating budget for the base year approved by HUD except the following:

- (1) Utilities expense;
- (2) Cost of an independent audit;
- (3) Adjustments applicable to budget years before the base year;
- (4) Expenditures supported by supplemental subsidy payments

applicable to budget years before the base year;

(5) All other expenditures that are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and

(6) Expenditures that were funded from a nonrecurring source of income.

(b) *Adjustment.* In compliance with the six exclusions set forth in paragraph (a) of this section, the IHA shall adjust the AEL by excluding any of these items from the Base Year Expense Level, if this has not already been accomplished. If such adjustment is made in the second or some later fiscal year of the PFS, the AEL shall be adjusted in the year in which the adjustment is made, but the adjustment shall not be applied retroactively. If the IHA does not make these adjustments, the HUD Area ONAP shall compute the adjustments.

(c) *Computation of "Formula Expense Level."* The IHA shall compute its Formula Expense Level (FEL) in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular IHA's inventory. The formula takes into account such data as the number of two or more bedroom units, ratio of two or more bedroom units in high-rise family projects, ratio of units with three or more bedrooms, local government wage rates, and number of pre-1940 rental units occupied by poor households. It uses weights and a local inflation factor assigned each year to derive a Formula Expense Level for the current year and the requested budget year. The weights of the formula and the formula are subject to updating by HUD.

(d) *Computation of Allowable Expense Level.* The IHA shall compute its Allowable Expense Level as follows:

(1) *Allowable Expense Level for first budget year under PFS if Base Year Expense Level does not exceed the top of the range.* The top of the range is defined as: FEL plus \$10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every IHA whose Base Year Expense Level is less than the top limit of the range shall compute its AEL for the first budget year under PFS by adding the following to its Base Year Expense Level (before adjustment under § 950.730);

(i) Any increase approved by HUD in accordance with § 950.730(a);

(ii) The increase (decrease) between the Formula Expense Level for the base year and the Formula Expense Level for the first budget year under PFS; and

(iii) The sum of the Base Year Expense Level and any amounts described in paragraphs (d)(1)(i) and (ii)

of this section multiplied by the local inflation factor.

(2) *Allowable Expense Level for first budget year under PFS if Base Year Expense Level exceeds the top of the range.* The top of the range is defined as: FEL plus \$10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every IHA whose Base Year Expense Level exceeds the top of the range shall compute its AEL for the first budget year under PFS by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

(i) The increase (decrease) between the Formula Expense Level for the base year and the Formula Expense Level or the first budget year under PFS;

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the local inflation factor. (If the Base Year Expense Level is above the allowable expense level, computed as provided in paragraph (d) of this section, the IHA may be eligible for transition funding under § 950.735.)

(3) *Allowable Expense Level for first budget year under PFS for a new project.* A new project of a new IHA or a new project of an existing IHA that the IHA decides to place under a separate ACC, which did not have a sufficient number of units available for occupancy in the base year to have a level of operations representative of a full fiscal year of operation is considered to be a "new project." The AEL for the first budget year under PFS for a "new project" will be based on the AEL for a comparable project, as determined by the HUD Area ONAP. The IHA may suggest a project or projects it believes to be comparable.

(4) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1986 and before April 1, 1992.* For each budget year after the first budget year under PFS that begin on or after April 1, 1986 and before April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 950.720(c);

(ii) The AEL for the current budget year also shall be increased (or decreased) by either:

(A) If the IHA has not experienced a change in the number of its units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4)(ii)(B) of this section, the AEL shall be increased by one-half of one percent (.5 percent); or

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(4)(ii)(B) of this section, it shall use the increase (decrease) between the Formula Expense Level for the current budget year and the Formula Expense Level for the requested budget year. The IHA characteristics that shall be used to compute the Formula Expense Level for the current budget year shall be the same as those that were used for the requested budget year when the last adjustment to the AEL was made based on this paragraph (d)(4)(ii)(B) of this section, except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(4)(ii)(A) of this section shall be added to the average age that was used for the last adjustment; and

(iii) The amount computed in accordance with paragraphs (d)(4)(i) and (ii) of this section shall be multiplied by the local inflation factor.

Example:

FY 1987. Assume that: (1) The IHA has experienced no change in the number of its units;

(2) The AEL for the IHA's FY 1986 is \$64.00; and

(3) The applicable local inflation factor is 6 percent (expressed as 1.06). The AEL for FY 1987 is \$68.18, computed as follows:

1. Allowable Expense Level for FY 1986	\$64.00
2. Delta: Increase (or Decrease) in Formula Expense Level (\$64.00 × .5 percent)32
3. Sum (line 1 plus line 2)	64.32
4. Local Inflation Factor	1.06
5. Allowable Expense Level for FY 1987 (line 3 multiplied by line 4) ...	68.18

FY 1988. Assume that the IHA has deprogrammed (e.g., demolished or sold) a project that represents seven percent of its units, and that the last time an adjustment to the AEL was made based on paragraph (d)(4)(ii)(B) of this section was in its FY 1985, at which time the IHA had the following characteristics for its requested budget year: average age of 10 years, average project height of 5 stories, and average unit size of 4 bedrooms. The Formula Expense Level for the current budget year is calculated using 12 years (10 years plus two years in which the standard .5 percent adjustment was used), 5 stories, and 4 bedrooms.

Also assume that Formula Expense Level calculated based on these characteristics is \$70.00 and that the IHA average characteristics for the requested budget year are now an average age of 8 years, average project height of 4 stories and average unit size of 2 bedrooms, resulting in a Formula

Expense Level for the requested budget year of \$68.00. The Formula Expense Level for the requested budget year, therefore, decreases by \$2.00. Assuming that the local inflation factor is 4.5 percent (expressed as 1.045), the AEL for FY 1988 is \$69.16, computed as follows:

1. Allowable Expense Level for FY 1987	\$68.18
2. Delta (or Decrease) in Formula Expense Level	(2.00)
3. Sum (line 1 plus line 2)	66.18
4. Local Inflation Factor	1.045

It should be noted that the Delta in line 2 of the example reflects the application of the formula weights, constant, and local inflation factor for the requested budget year applied first to the IHA characteristics for the current budget year and then to the IHA characteristics for the requested budget year, to determine the respective Formula Expense Levels. The local inflation factor shown on line 4 of the example is the same one used in determining the Formula Expense Levels.

(5) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1992.* For each budget year after the first budget year under PFS that begins on or after April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 950.720(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(5)(ii)(B) of this section, it shall use the increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year. The IHA's characteristics that shall be used to compute the Formula Expense Level for the Current Budget Year shall be the same as those that applied to the Requested Budget Year when the last adjustment to the AEL was made based on this paragraph (d)(5)(ii)(B) of this section, except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(5)(ii)(A) of this section shall be added to the average age that was used for the last adjustment.

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.* HUD may adjust the AEL of budget years after the first year under PFS under the provisions of §§ 950.710(b) or 950.720(c).

§ 950.715 Computation of Utilities Expense Level.

(a) *General.* In recognition of the rapid rises that occur in utilities costs, the wide diversity among IHAs as to types of utilities services used, the manner in which utilities payments are allocated between IHAs and tenants, and the fact that utilities rates charged by suppliers are beyond the control of the IHA, the PFS treats utilities expenses separately from other IHA expenses. Utilities expenses are, therefore, excluded from the IHA's Allowable Expense Level, and the PFS provides for computation of the amount of operating subsidy for utilities costs based upon a calculated utilities expense of each IHA. Accordingly, the IHA's Utilities Expense Level for the requested budget year shall be computed by multiplying the Allowable Utilities Consumption Level (AUCL) per-unit per-month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(b) *Utilities rates.* (1) The currently applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the operating budget is submitted to HUD will be used as the utilities rates for the requested budget year, except that when the appropriate utility commission has, before the date of submission of the operating budget to HUD, approved and published rate changes to be applicable during the requested budget year, the future approved rates may be used as the utilities rates for the entire requested budget year.

(2) If an IHA takes action, such as a well-head purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the IHA will be permitted to retain one-half of the cost savings during the first 12 months attributable to its actions. Upon determination that the action was cost-effective in the first year, the IHA may be permitted to retain one-half the annual cost savings for an additional period not to exceed six years, if the actions continue to be cost-effective. See also paragraph (f) of this section and § 950.730(c).

(c) *Computation of "Allowable Utilities Consumption Level."* The

Allowable Utilities Consumption Level (AUCL) used to compute the Utilities Expense Level of an IHA for the requested budget year generally will be based upon the availability of consumption data. For project utilities for which consumption data are available for the entire rolling base period, the computation will be in accordance with paragraph (c)(1) of this section. If data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project for which the IHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (f)(1) of this section, the computation of the AUCL may be made in accordance with paragraph (c)(4) of this section. The AUCL for all of an IHA's projects is the sum of the amounts determined using all of the paragraphs in this paragraph (c), as appropriate.

(1) *Rolling Base Period System.* For project utilities with consumption data for the entire rolling base period, the AUCL is the average amount consumed per unit per month during the rolling base period, adjusted in accordance with paragraph (d) of this section. The IHA shall determine the average amount of each of the utilities consumed during the rolling base period (i.e., the 36-month period ending 12 months prior to the first day of the requested budget year).

(i) *IHA fiscal years affected.* The rolling base period shall be used to compute the AUCL submitted with the operating budgets. (ii) An example of a rolling base is as follows:

IHA fiscal year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1-1-92 ...	12-31-92 (1st year).	1-1-88	12-31-90
1-1-93 ...	12-31-93 (2nd year).	1-1-89	12-31-91

(2) Alternative method if data is not available for the entire rolling base period:

(i) If the IHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole rolling base period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its rolling base period to the HUD Area ONAP for approval. If this is

not possible, it shall submit consumption data for the last 12 months of its rolling base period. The IHA also shall submit a written explanation of the reasons that data for the whole rolling base period is unavailable.

(ii) In those cases when an IHA has not maintained or cannot recapture consumption data for a utility for the entire rolling base period, comparable consumption for the greatest of either 36, 24, or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the rolling base period of comparable project(s) with comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each IHA, other than those IHAs defined as new projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month rolling base period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all IHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If an IHA cannot develop the consumption data for the rolling base period or for 12 or 24 months of the rolling base period, either from its own project(s) data, or by using comparable consumption data the actual per-unit per-month utility expenses stated in paragraph (d) of this section shall be used as the Utilities Expense Level.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.* (i) A new project, for the purpose of establishing the rolling base period and the Utilities Expense Level, is defined as either:

(A) A project that had not been in operation during at least 12 months of the rolling base period, or a project that enters management after the rolling base period and before the end of the requested budget year; or

(B) A project that during or after the rolling base period, has experienced conversion from one energy source to another, interruptible service, deprogrammed units, a switch from tenant-purchased to IHA-supplied utilities, or a switch from IHA-supplied to tenant-purchased utilities.

(ii) The actual consumption for new projects shall be determined so as not to distort the rolling base period in accordance with a method prescribed by HUD.

(4) *Freezing the Allowable Utilities Consumption Level (AUCL).* (i)

Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if an IHA undertakes energy conservation measures that are approved by HUD under paragraph (f) of this section, the AUCL for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it shall be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (g) of this section.

(ii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the IHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

(d) *Utilities Expense Level when consumption data for the full rolling base period is unavailable.* If an IHA does not obtain the consumption data for the entire rolling base period, or for 12 or 24 months of the rolling base period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Area ONAP approval to use actual per-unit per-month utility expenses. These expenses shall exclude utilities labor and other utilities expenses. The actual per-unit per-month utility expenses shall be taken from the year-end statement of operating receipts and expenditures Form HUD-52599 (Office of Management and Budget approval number 2577-0067), prepared for the IHA fiscal year that ended 12 months before the beginning of the IHA requested budget year (e.g., for an IHA fiscal year beginning January 1, 1983, the IHA would use data from the fiscal

year ended December 31, 1981). Subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual per-unit per-month utility expenses.

(e) *Adjustments.* IHAs shall request adjustments of utilities expense levels in accordance with § 950.730(c), which requires an adjustment based upon a comparison of actual experience and estimates of consumption and of utility rates.

(f) *Incentives for energy conservation improvements.* If an IHA undertakes energy conservation measures (including measures to save water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the IHA may qualify for one of two possible incentives under this part. For an IHA to qualify for these incentives, it shall obtain HUD approval. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the IHA's payments to be dependent on the cost savings it realizes, the IHA shall use at least 50 percent of the cost savings to pay the contractor. With this type of contract, the IHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 950.730(c)(2)(ii).

(2) If the contract does not allow the IHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the IHA will be able to retain part of the cost savings, in accordance with § 950.730(c)(2)(i); and the IHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the improvement loan during the term of the contract, in accordance with § 950.730(f).

§ 950.720 Other costs.

(a) *Costs of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the PFS. However, the IHA shall not request, nor will HUD approve, an operating subsidy for the

cost of an independent audit if the audit has been funded by subsidy in a prior year. The IHA's estimate of cost of the independent audit is subject to adjustment by HUD. If the IHA requires assistance in determining the amount of cost to be estimated, it should contact the HUD Area ONAP.

(2) An IHA that is required by the Single Audit Act (31 U.S.C. 7501-7507) (see 24 CFR part 44) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The amount shall be prorated between the IHA's development cost budget and one or all of its operating budgets, as appropriate. The estimated cost of an independent audit, applicable to the operations of IHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 950.705.

(3) An IHA that is exempt from the audit requirements of the Single Audit Act (31 U.S.C. 7501-7507) (see 24 CFR part 44) may receive operating subsidy to offset the cost of an independent audit chargeable to operations (after the end of the initial operating period) if the IHA chooses to have an audit.

(b) *Costs attributable to units approved for deprogramming and vacant.* (1) Units approved for deprogramming are those for which the IHA's formal request has been approved by HUD but for which deprogramming has not been completed. Costs for these units may be eligible for inclusion, but shall be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because they are utilized for IHA-related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of unit months available. Units approved for deprogramming shall be listed by the IHA and supporting documentation regarding direct costs attributable to such units shall be included as part of the operating budget in which the IHA requests operating subsidy for these units. If the IHA requires assistance in this matter, it should contact the HUD Area ONAP.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to them are to be included in the operating budget. If a unit

satisfies the conditions stated in paragraphs (b)(2) (i) through (v) of this section, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than three years. Renewal of the approval to allow payments after that period may be made only if the IHA can demonstrate that no other sources for paying the nonutility operating costs of the unit are available:

(i) The unit shall be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities shall be directed toward and for the benefit of residents of the development.

(ii) The IHA shall demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that resources are committed to make the space safe and suitable.

(iii) The IHA shall demonstrate satisfactorily that other funding is not available to pay for the nonutility operating costs. All rental income generated as a result of the activity shall be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per Indian housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters.

(v) The IHA shall submit a certification with its Performance Funding System calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The IHA shall maintain specific documentation of the units covered. Such documentation should include a listing of the units and project/management control numbers.

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulations have caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, and upon a determination that sufficient other

funds are not available to cover the required expenditures, HUD may in HUD's sole discretion decide to prescribe a procedure under which the IHA may apply for or may receive an increase in operating subsidy.

(d) *Costs beyond the control of the IHA.* Costs attributable to unique circumstances that are beyond the control of the IHA and were not reflected in the IHA's Base Year Expense Level may be considered for supplemental operating subsidy funding. When costs were reflected in the IHA's Base Year Expense Level, but the rate of increase for such costs is greater than the prescribed PFS inflation rate(s), then the increase in excess of that provided by the inflation rate may be considered for supplemental operating subsidy funding. The IHA shall submit to the HUD Area ONAP complete documentation relating to those cost items that it claims to be beyond its control. Such documentation shall not be submitted as part of the requested operating budget, but shall be submitted separately as an addendum to the budget. The IHA also shall show that these additional costs cannot be funded from its own resources. In the event that excess funds are available after making all payments approvable under §§ 950.705 and 950.720 of this chapter, HUD may, in HUD's sole discretion, solicit, evaluate, and approve or disapprove, in full or in part, these requests for additional operating subsidy for costs beyond the control of the IHA.

(e) *Costs resulting from combination of two or more units.* When an IHA redesigns or rehabilitates a project and combines two or more units into one larger unit, and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula $[(2 \times \text{No. of bedrooms}) \text{ minus } 1]$, which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

(f) *User fee.* Additional operating subsidy will be provided to IHAs for payment of an annual User Fee separate from the PFS. An IHA operating a rental program shall pay an annual User Fee to municipalities, which may include tribal, city, county governments or other political subdivisions that provide any

roads, water supply, sewage facilities, electrical systems, or fuel distribution systems. The annual User Fee will be paid in an amount equal to 10 percent of the applicable shelter rent, minus the utility allowance; or \$150, whichever is greater, for each rental housing unit covered by this section.

(g) *Funding for resident organization expenses.* In accordance with the provisions of 24 CFR Part 950, subpart O, and procedures determined by HUD, each IHA with a duly elected resident organization shall include in the operating subsidy eligibility calculation \$25 per unit per year (subject to appropriations) for each unit represented by a duly-elected resident organization in support of the duly elected resident organization's activities.

§ 950.725 Projected operating income level.

(a) *Policy.* PFS determines the amount of operating subsidy for a particular IHA based in part upon a projection of the actual dwelling rental income and other income for the particular IHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the IHA, and projecting this amount for the requested budget year by applying an upward trend factor (subject to updating) of three percent, and multiplying this amount by the projected occupancy percentage for the requested budget year. Nondwelling income is projected by the IHA subject to adjustment by HUD. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income.* The projected average monthly dwelling rental income per unit for the IHA is computed as follows:

(1) *Average monthly dwelling rental charge per unit.* The dollar amount of the average monthly dwelling rental charge per unit shall be computed on the basis of the total dwelling rental charges (total of the adjusted rent roll amounts) for all project units, as shown on the rent roll control and analysis of dwelling rent charges, which the IHA is required to maintain, for the first day of the month that is six months before the first day of the requested budget year, except that if a change in the total of the rent rolls has occurred in a subsequent month that is before the beginning of the requested budget year and before the submission of the requested budget year operating budget, the IHA shall use the latest changed rent roll for the purpose of the computation. This aggregate dollar amount shall be divided by the

number of occupied dwelling units as of the same date.

(2) *Three percent increase.* The average monthly dwelling rental charge per unit, computed under paragraph (b)(1) of this section, is increased by three percent to obtain the projected average monthly dwelling rental charge per unit of the IHA for the requested budget year.

(3) *Projected occupancy percentage.* The IHA shall determine its projected percentage of occupancy for all project units (projected occupancy percentage) as follows:

(i) *High occupancy IHAs.* If the IHA's actual occupancy percentage (see § 950.760) is equal to or greater than 97 percent, the IHA's projected occupancy percentage is 97 percent.

(ii) *High occupancy IHAs exclusive of scheduled modernization.* If the IHA's actual occupancy percentage (see § 950.760) is less than 97 percent solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section, the IHA's projected occupancy percentage is its actual occupancy percentage. An IHA may also use its actual occupancy percentage as its projected occupancy percentage if the IHA has five or fewer vacant units other than vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section.

(iii) *Low occupancy IHAs with an approved Comprehensive Occupancy Plan (COP).* If the IHA has an actual occupancy percentage (see § 950.760) less than 97 percent and more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section, and if the IHA has a HUD-approved COP, the IHA's projected occupancy percentage is determined under § 950.770(g).

(iv) *Low Occupancy IHAs without an approved COP.* (A) The IHA shall use 97 percent as its projected occupancy percentage, if the IHA:

(1) Has an actual occupancy percentage (see § 950.760) less than 97 percent and has more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section; and the IHA:

(2)(i) Has completed the term of its approved COP but has not achieved a 97 percent actual occupancy percentage or has not had five or fewer vacant units other than vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section; or

(ii) Is authorized to submit a COP but elects not to submit one; or

(iii) Submits a COP that is disapproved by HUD.

(B) Notwithstanding the requirement in paragraph (b)(3)(iv)(A) of this section that 97 percent be the projected occupancy percentage, a low occupancy IHA that satisfies all the conditions described in paragraph (b)(3)(iv)(A)(2)(i) of this section, may adjust the 97 percent projected occupancy percentage to discount units that are vacant for reasons beyond its control, as provided in § 950.770(h).

(v) *Vacant, on-schedule modernization units.* Vacant, on-schedule modernization units are vacant units in an otherwise occupiable project that has received funding for modernization through the Comprehensive Improvement Assistance Program (subpart I of this part) or other sources; and for which:

(A) It is expected that the vacant units will be occupied on completion of modernization work;

(B) The IHA has a schedule for carrying out the modernization that is acceptable to HUD; and

(C) The modernization work is on schedule.

(4) *Projected average monthly dwelling rental income.* The projected occupancy percentage under paragraph (b)(3) of this section shall be multiplied by the projected average monthly dwelling rental charge under paragraph (b)(2) of this section to obtain the projected monthly dwelling rental income per unit.

(c) *Projected average monthly dwelling rental charge per unit for new projects.* The projected average monthly dwelling rental charge for new projects that were not available for occupancy during the budget year before the requested budget year and that will reach the end of the initial operating period (EIOP) within the first nine months of the requested budget year, shall be calculated as follows:

(1) If the IHA has another project or projects under management that are comparable in terms of elderly and nonelderly tenant composition, the IHA shall use the projected average monthly dwelling rental charge for such project or projects.

(2) If the IHA has no other projects that are comparable in terms of elderly and nonelderly tenant composition, the HUD Area ONAP will provide the projected average monthly dwelling rental charge for such project or projects, based on comparable projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken after the effective date of these regulations, which affects rent paid by

tenants of projects, each IHA shall submit a revision of its annual operating budget showing an estimate of any change in rental income that it anticipates as the result of the implementation of said provisions. HUD shall have complete discretion to adjust the projected average monthly dwelling rental charge per unit to reflect the IHA's estimate of change, or in the absence of this submission, to reflect HUD's estimate of such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the IHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *IHA's estimate of income other than dwelling rental income.* (1) *Investment income.* IHAs with an estimated average cash balance of less than \$20,000, excluding investment income earned from a funded replacement reserve under § 950.666(f), shall make a reasonable estimate of investment income for the Requested Budget Year. IHAs with an estimated average cash balance of \$20,000 or more, excluding investment income earned from a funded replacement reserve under § 950.666(f), shall estimate interest on general fund investments based on the estimated average yield for 91-day Treasury bills for the IHA's Requested Budget Year (yield information will be provided by HUD). The determination of average cash balance will allow a deduction of \$10,000, plus \$10 per unit for each unit over 1,000, subject to a total maximum deduction of \$250,000. In all cases, the estimated investment income amount shall be subject to HUD approval. (See § 950.730(b)).

(2) *Other income.* All IHAs shall estimate other income based on past experience and a reasonable projection for the requested budget year, which estimate shall be subject to HUD approval.

(3) *Total.* The estimated total amount of income from investments and other income, as approved, shall be divided by the number of unit months available to obtain a per-unit per-month amount. Such amount shall be added to the projected average dwelling rental income per unit to obtain the projected operating income level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

(f) *Required adjustments to estimates.* The IHA shall submit year-end adjustments of projected operating income levels in accordance with § 950.730(b), which covers investment income.

§ 950.730 Adjustments.

Adjustment information submitted to HUD under this section shall be accompanied by an original or revised operating budget.

(a) *Adjustment of Base Year Expense Level.* (1) *Eligibility.* An IHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the formula for the first time, may, during its first budget year under PFS, request HUD to increase its Base Year Expense Level. Included in this category are existing IHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC for which operating subsidy has never been paid, except for IPA audit costs. This request may be granted by HUD, in its discretion, only when the IHA establishes to HUD's satisfaction that the Base Year Expense Level computed under § 950.710(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the per-unit per-month amount by which the top of the range exceeds the Base Year Expense Level or \$10.31.

(2) *Procedure.* An IHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the operating budget for the first budget year under PFS. Such request shall be submitted to the HUD Area ONAP, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph shall include a calculation of the amount per-unit per-month of requested increase in the Base Year Expense Level, and shall show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to estimated investment income.* An IHA that has an estimated average cash balance of at least \$20,000 shall submit a year-end adjustment to the estimated amount of investment income that was used to determine subsidy eligibility at the beginning of the IHA's fiscal year. The amount of the adjustment will be the difference between the estimate and a target investment income amount based on the actual average yield on 91-day Treasury bills for the IHA's fiscal year being adjusted and the actual average cash balance available for investment during the IHA's fiscal year, computed in accordance with HUD requirements. HUD will provide the IHA with the actual average yield on 91-day Treasury bills for the IHA's fiscal year. Failure of an IHA to submit the required

adjustment of investment income by the date due may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until the adjustment is received.

(c) *Adjustments to Utilities Expense Level.* An IHA receiving operating subsidy under § 950.705, excluding those IHAs that receive operating subsidy solely for IPA audit (§ 950.720(a)), shall submit a year-end adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the IHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This request shall be submitted to the HUD Area ONAP by a deadline established by HUD, which will be during the IHA fiscal year following the IHA fiscal year for which an operating subsidy was received by the IHA, exclusive of a subsidy solely for IPA audit costs. Failure to submit the required adjustment of the Utilities Expense Level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until it is received. Adjustments under this subsection normally will be made in the IHA fiscal year following the year for which the adjustment is applicable, except as provided in paragraph (c)(5) of this section or unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) *Rates.* (i) A decrease in the utilities expense level because of decreased utility rates—to the extent funded by operating subsidy—will be deducted by HUD from future operating subsidy payments. However, when the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the IHA, such as well-head purchase of natural gas, or administrative appeals or legal action beyond normal public participation in ratemaking proceedings, then the IHA will be permitted to retain one-half of the cost savings attributable to its actions for the first year, and upon determination that the action was cost-effective in the first year, for up to an additional six years, as long as the actions continue to be cost-effective, and the other one-half of the cost savings will be deducted from operating subsidy otherwise payable.

(ii) An increase in the utilities expense level because of increased utility rates—to the extent funded by operating subsidy—will be fully funded by increased operating subsidy, subject to availability of funds.

(2) *Consumption.* (i) Generally, 50 percent of any decrease in the Utilities Expense Level attributable to decreased consumption after adjustment for any utility rate change, will be retained by the IHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of an IHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 950.715(f)(1), the IHA may retain 100 percent of the savings from decreased consumption after payment of the amount due the contractor until the term of the financing agreement is completed. The decreased consumption is to be determined by adjusting for any utility rate changes. The savings realized shall be applied in the following order:

(A) Retention of up to 50 percent of the total savings from decreased consumption to cover training of IHA employees, counseling of tenants, IHA management of the cost reduction program, and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) Fifty percent of the increase in the Utilities Expense Level attributable to increased consumption will be funded by increased operating subsidy payments, subject to the availability of funds.

(3) *Emergency adjustments.* In emergency cases, when an IHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, the IHA may submit to HUD an adjustment covering only the rate increase at any time during the IHA's Current Budget Year. Unlike the adjustments mentioned in paragraphs (c)(1) and (c)(2) of this section, the IHA shall submit this adjustment to the HUD Area ONAP by revision of the original submission of the estimated Utility Expense Level for the fiscal year to be adjusted.

(4) *Documentation.* The IHA shall retain supporting documentation substantiating the requested adjustments pending HUD audit.

(d) *Requests for adjustments to projected average monthly dwelling rental income.* The IHA may make requests for adjustments to projected average monthly dwelling rental income as follows:

(1) *Criteria for granting request.* An IHA may request an adjustment to projected average monthly dwelling rental income under PFS if the IHA can establish to HUD's satisfaction that the projected amount computed under § 950.725 was not attained because of

circumstances beyond the control of the IHA, such as a substantial increase in general unemployment in the locality, or because of a revision of the IHA's rent schedule that has been approved by HUD. The IHA shall also demonstrate to HUD's satisfaction that it has established and is effectively implementing tenant selection criteria in compliance with HUD requirements. HUD shall have complete discretion to approve completely, approve in part, or deny any requested adjustments to projected average monthly dwelling rental income.

(2) *Procedure.* The IHA shall submit a request for an adjustment under this subsection to the HUD Area ONAP by a deadline established by HUD, which will be within twelve months following the IHA's fiscal year being adjusted. In emergency cases, however, when an IHA establishes to HUD's satisfaction that decreased rental income would result in a severe financial crisis, the IHA may submit a request for adjustments to HUD at an earlier time.

(e) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 950.715(f)(2), then the IHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year (and a maximum contract period of 12 years).

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for the Heating Degree Days experience for the year, and for any change in utility rate.

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (c)(2)(ii) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (e) to pay for the energy conservation measure in that year, the deficiency will be offset against the IHA's operating subsidy eligibility for the IHA's next fiscal year.

(3) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if

HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or IHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

(f) *Formal review process (1992).* (1) *Eligibility for consideration.* Any IHA with an established Allowable Expense Level may request to use a revised Allowable Expense Level for its requested budget year that starts on or after April 1, 1992 (and ends during calendar year 1993).

(2) *Eligibility for adjustment.* (i) If an IHA's AEL for the budget year that ends during calendar year 1992 is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level, as calculated using the revised formula and the characteristics for the IHA and its community, then the IHA's AEL for the budget year that ends during calendar year 1993 is subject to adjustment at the IHA's request. The revised formula expense level for the fiscal year ending during calendar year 1992 is the IHA's value of the following formula, after updating by the local inflation factors from FY 1989 to the requested budget year.

(ii) The revised formula is the sum of the following six numbers:

(A) The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954. This Census-based statistic applies to the county of the IHA, except that, if the IHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(B) The Local Government Wage Rate multiplied by a weight of 116.496. The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted IHA standard of 1.0. For multi-county IHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment

determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

(C) The lesser of the current number of the IHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.

(D) The current ratio of the number of the IHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the IHA's units available for occupancy multiplied by a weight of 37.294. For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy, averaging 35 or more units available for occupancy per building, and containing at least one building with units available for occupancy that is five or more stories high.

(E) The current ratio of the number of the IHA's three or more bedroom units available for occupancy to the number of all the IHA's units available for occupancy multiplied by a weight of 22.303.

(F) An equation calibration constant of -.2344.

(3) *Procedure.* If an IHA wants to request a revision to its AEL, it should determine whether its AEL for the fiscal year ending in calendar year 1992 (for purposes of this section, the "unrevised AEL") is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level. Then, in lieu of using the unrevised AEL as the basis for developing the IHA's AEL and operating budget for the fiscal year ending in calendar year 1993, the IHA will use 85 percent of the FEL (if this is higher than the unrevised AEL) or 115 percent of the FEL (if this is lower than the unrevised AEL). If an IHA has submitted its original operating budget before the publication of a change to the PFS handbook containing forms and instructions necessary to implementation of this regulatory change, the IHA shall submit a revision to its operating budget with calculations based on the new AEL. If an IHA requests such revision of its AEL in connection with submission of an operating budget and its current AEL is within 85 to 115 percent of the FEL, HUD will not adjust the AEL. If an IHA requests revision and its AEL is not within 85 to 115 percent of the FEL, HUD will increase it to 85 percent or decrease it to 115 percent. The revised Allowable Expense Levels approved by HUD will be put into effect for the IHA's budget year that begins on or after April 1, 1992 (and thus ends in calendar year 1993).

(g) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the IHA's operating subsidy as result of data subsequently available to HUD that alters projections upon which the approved operating subsidy was based. Normally adjustments shall be made in total in the IHA fiscal year in which the needed adjustment is determined; however, if a downward adjustment would cause a severe financial hardship on the IHA, the HUD Area ONAP may establish a recovery schedule that represents the minimum number of years needed for repayment.

§ 950.735 Transition funding for excessive high-cost IHAs.

If an IHA's Base Year Expense Level exceeds its Allowable Expense Level, computed as provided in § 950.710, for any budget year under PFS, the IHA may be eligible for transition funding. Transition funding shall be an amount not to exceed the difference between the Base Year Expense Level and the Allowable Expense Level for the requested budget year, multiplied by the number of units months available. HUD shall have the right to discontinue payment of all or part of the transition funding in the event HUD at any time determines that the IHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

§ 950.740 Operating reserves.

The IHA shall maintain an operating reserve in an amount sufficient for working capital purposes, estimated future nonroutine maintenance requirements for IHA-owned administrative facilities, common property and dwelling units, payment of advanced insurance premiums, unanticipated project requirements, and other eligible uses as determined by the IHA.

§ 950.745 Operating budget submission and approval.

(a) *Required documentation.* (1) An IHA shall prepare an operating budget each fiscal year in a manner prescribed by HUD. The board of commissioners shall review and approve the budget by resolution. Each fiscal year, the IHA shall submit to the Area ONAP the approved board resolution and the necessary HUD-required PFS calculation forms.

(2) The Area ONAP may direct an IHA to submit a complete operating budget if the IHA has been issued a corrective

action order with respect to financial management. If such action is necessary, the Area ONAP will notify the IHA prior to the beginning of the fiscal year.

(b) *HUD operating budget review.* (1) The HUD Area ONAP will perform a detailed review on IHA operating budgets that are subject to HUD review and approval. If the HUD Area ONAP finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Area ONAP may at any time require the submission by the IHA of further information regarding an operating budget or operating budget revision.

(2) When the IHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing, HUD will notify the IHA that it no longer is required to submit an operating budget to HUD for review and approval.

§ 950.750 Payment procedure for operating subsidy under PFS.

(a) *General.* Subject to the availability of funds, payments of operating subsidy under PFS shall be made generally by electronic funds transfers, based on a schedule submitted by the IHA and approved by HUD, reflecting the IHA's projected cash needs. The schedule may provide for several payments per month. If an IHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make an informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of an IHA's budget year under these PFS regulations in this subpart, annual, monthly, or quarterly payments of operating subsidy shall be made, as provided in paragraph (a) of this section, based upon the amount of the IHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under PFS for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to IHAs.

§ 950.755 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *Policy.* The income and composition of each family shall be reexamined at least annually (see § 950.315). IHAs shall be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *IHAs in compliance with requirements.* Each submission of the original operating budget for a fiscal year shall be accompanied by a certification by the IHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with subpart D of this part.

(c) *IHAs not in compliance with requirements.* Any IHA not in compliance with the annual income reexamination requirement at the time of operating budget submission shall furnish to the HUD Area ONAP a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months preceding the date of the operating budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Area ONAP Director determines that the IHA is not substantially in compliance with the annual income reexamination requirement, HUD shall withhold payments to which the IHA might otherwise be entitled under this part, equal to his or her estimate of the loss of rental income to the IHA resulting from its failure to comply with those requirements.

§ 950.760 Determining actual occupancy percentage.

(a) For each requested budget year beginning on or after July 1, 1986, the IHA shall determine the percentage of occupancy for all project units included in the unit months available (actual occupancy percentage), at its option, either:

(1) For the last day of the month that ends six months before the beginning of the requested budget year; or

(2) Based on the average occupancy during the month ending six months before the beginning of the requested budget year.

(b) If the IHA elects to use an average, it shall maintain a record of its computation of its actual occupancy percentage. The actual occupancy percentage shall be adjusted to reflect expected changes in occupancy because of modernization, new development, demolition, or disposition in order to reflect the expected average occupancy

rate throughout the year. If, after that date, there are changes, up or down, in occupancy because of modernization, new development, demolition, or disposition not reflected in the adjustment, the IHA shall submit a budget revision to reflect the actual change in occupancy due to these actions.

§ 950.770 Comprehensive Occupancy Plan (COP) requirements.

(a) *IHAs that may submit a Comprehensive Occupancy Plan (COP).* An IHA may prepare and submit a COP to HUD in accordance with the provisions of this section:

(1) For its first requested budget year beginning on or after July 1, 1986, if the IHA has an actual occupancy percentage (§ 950.760) less than 97 percent, and has more than five vacant units, not solely because of vacant, on-schedule modernization units (as defined in § 950.725(b)(3)(v)); or

(2) For a requested budget year beginning on or after July 1, 1987, if:

(i) The IHA projects an actual occupancy percentage (§ 950.760) for the requested budget year of less than 97 percent and has more than five vacant units, other than vacant, on-schedule modernization units;

(ii) The IHA is not currently a low occupancy IHA, that is, the IHA had an actual occupancy percentage determined under § 950.760 for the current requested budget year that equalled or exceeded 97 percent or had five or fewer vacant units other than vacant, on-schedule modernization units; and

(iii) The IHA is not currently under a COP.

(b) *Comprehensive Occupancy Plan content.* A COP shall provide a general IHA-wide strategy for returning to occupancy or deprogramming all vacant units and a specific strategy for returning to occupancy or deprogramming units for each project that has an occupancy percentage of less than 97 percent.

(1) The general IHA-wide strategy for returning to occupancy or deprogramming all vacant units shall specify management actions the IHA is taking or intends to take to eliminate vacancies, such as revised occupancy policies, actions to reduce time to return vacated units to occupancy, and identification of the need to use the exception for nonelderly tenants in elderly projects, and shall include a schedule for completing these actions.

(2) The project-specific strategy shall:

(i) Identify each project that has a percentage of occupancy less than 97 percent.

(ii) State the project-specific actions the IHA is taking or intends to take to eliminate vacancies, such as:

- (A) Modernization;
- (B) Demolition;
- (C) Disposition;
- (D) Change in occupancy policy; or
- (E) Physical or management

improvements; and

(iii) For each project identified, include a schedule for completing these actions and returning the units to occupancy.

(3) The COP shall also include yearly IHA-wide occupancy goals and yearly occupancy goals for each project with an occupancy rate below 97 percent stated for each year until there is a projected IHA-wide occupancy rate of at least 97 percent or an estimate that the IHA will have five or fewer vacant units, excluding units that are vacant, on-schedule modernization units. These goals should reflect the average occupancy percentage for each year. The yearly occupancy goals (both IHA-wide and project specific) for the first year of a COP that is submitted with an IHA's budget for its first requested budget year beginning on or after July 1, 1986, shall take into account actions taken by the IHA from August 2, 1985, to reduce vacancies.

(c) *Time for submitting a Comprehensive Occupancy Plan.* An IHA that submits a COP to HUD for approval in accordance with paragraph (a) of this section shall submit the COP with its budget.

(d) *Maximum term of a Comprehensive Occupancy Plan.* (1) Except as provided in paragraph (d)(2) of this section, a COP:

(i) Submitted for an IHA's first requested budget year beginning on or after July 1, 1986, shall be for a period approved by HUD as reasonable, which shall not exceed five years; or

(ii) Submitted for a requested budget year beginning on or after July 1, 1987, shall be for a period of one or two years, as approved by HUD.

(2) A COP that exceeds the maximum period provided in paragraphs (d)(1)(i) or (ii) of this section may be approved only if the Assistant Secretary for Public and Indian Housing has given written authorization for such longer period before the approval of the COP.

(e) *Local governing body review.* The IHA shall have the COP reviewed by the local governing body for comment and shall submit any comments from the local governing body to HUD with the COP.

(f) *HUD review of Comprehensive Occupancy Plan.* If HUD fails to approve, disapprove, or otherwise substantively comment on a COP within

45 days of receipt of the plan, the IHA-wide yearly occupancy goal for the first year of the COP shall be considered approved for the purpose of determining the IHA's projected occupancy percentage under paragraph (g) of this section.

(g) *Projected Occupancy Percentage (Comprehensive Occupancy Plan).* An IHA that has a HUD-approved COP shall use as its projected occupancy percentage for computing its projected operating income level under § 950.725 the greater of its actual occupancy percentage, as determined under § 950.760, or its approved, yearly IHA-wide occupancy goal, adjusted as necessary to discount units that are vacant for reasons beyond the IHA's control, as provided in paragraph (h) of this section.

(h) *Units vacant for reasons beyond an IHA's control.* A vacant unit is considered vacant for reasons beyond an IHA's control only if the unit is located in a project that meets one of the following conditions:

(1) The IHA has applied for modernization, HUD cannot fund the project because of lack of sufficient funding, and it is expected that the units will be occupied when the units are modernized.

(2) The vacant units are vacant, on-schedule modernization units.

(3) The units are vacant because of natural disasters, or as a result of court-ordered, or HUD-approved, constraints relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

§ 950.772 Financial management systems, monitoring, and reporting.

The financial management systems, monitoring, and reporting on program performance and financial reporting will be in compliance with the requirements of 24 CFR 85.20, 85.40, and 85.41, except to the extent that HUD requirements provide for additional specialized procedures necessary to permit the Secretary to make the determinations regarding the payment of operating subsidy specified in section 9(a)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437g(a)(1)).

§ 950.774 Operating subsidy eligibility for projects owned by IHAs in Alaska.

The provisions of this subpart are applicable to the development, modernization, and operation of the rental housing owned by the IHAs in the State of Alaska, excluding the formula calculation for the PFS.

Subpart K—Energy Audits, Energy Conservation Measures and Utility Allowances

§ 950.801 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart K is to implement HUD policies in support of national energy conservation goals by reducing energy consumption through requiring that IHAs conduct energy audits and undertake certain cost-effective energy conservation measures. This subpart K also provides for the establishment of utility allowances for residents based on reasonable consumption of utilities by an energy-conscious household.

(b) *Applicability.* The provisions of this subpart K apply to all IHAs with IHA-owned housing, including Mutual Help and Turnkey III.

Energy Audits and Energy Conservation Measures

§ 950.805 Requirements for energy audits.

All IHAs shall complete an energy audit for each IHA-owned project under management. Standards for energy audits shall be equivalent to State or tribal standards for energy audits. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the IHA.

§ 950.810 Order of funding.

Within the funds available to an IHA, energy conservation measures should be accomplished with the shortest pay-back periods funded first. However, HUD Area ONAPs should permit IHAs to make adjustments to this funding order because of insufficient funds to accomplish high-cost energy conservation measures (ECM), or a situation in which an ECM with a longer pay-back period can be more efficiently installed in conjunction with other planned modernization. Area ONAPs may not authorize installation of individual utility meters that measure the energy or fuel used for space heating in dwelling units that need substantial weatherization, when installation of meters would result in economic hardship for residents. In these cases, the ECMs related to weatherization shall be accomplished before the installation of individual utility meters.

§ 950.812 Funding.

(a) The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the IHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are

eligible for inclusion in a modernization program, for funding from any available development funds in the case of projects still in development, or for other available funds that HUD may designate to be used for energy conservation.

(b) If an IHA finances energy conservation measures from sources other than modernization or operating reserves, such as on the basis of a promise to repay, HUD may agree to provide adjustments in its calculation of the IHA's operating subsidy eligibility under the PFS for the project and utility involved if the financing arrangement is cost-beneficial to HUD. (See § 950.730(e)).

§ 950.815 Energy conservation equipment and practices.

In purchasing original or, when needed, replacement equipment, IHAs shall acquire only equipment that meets or exceeds the minimum efficiency requirements established by the U.S. Department of Energy. In the operation of their facilities, IHAs shall follow operating practices directed to maximum energy conservation.

§ 950.822 Compliance schedule.

All energy conservation measures determined by energy audits to be cost effective shall be accomplished as funds are available.

§ 950.825 Energy performance contracts.

Method of procurement. Energy performance contracting shall be conducted using one of the following methods of procurement:

(a) Competitive proposals (see § 950.165(c)). In identifying the evaluation factors and their relative importance, as required by § 950.165(c)(1), the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or

(b) If the services are available only from a single source, noncompetitive proposals (see § 950.165(d)).

Individual Metering of Utilities

§ 950.840 Individually metered utilities.

(a) All utility service shall be individually metered to residents, either through provision of retail service to the residents by the utility supplier or through the use of checkmeters, unless:

(1) Individual metering is impractical, such as in the case of a central heating system in an apartment building;

(2) Change from a mastermetering system to individual meters would not be financially justified based upon a benefit/cost analysis; or

(3) Checkmetering is not permissible under State or local law, or under the

policies of the particular utility supplier or public service commission.

(b) If checkmetering is not permissible, retail service shall be considered. Where checkmetering is permissible, the type of individual metering offering the most savings to the IHA shall be selected.

§ 950.842 Benefit/cost analysis.

(a) A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective, except as otherwise provided in § 950.846.

(b) Proposed installation of checkmeters shall be justified on the basis that the cost of debt service (interest and amortization) of the estimated installation costs plus the operating costs of the checkmeters will be more than offset by reduction in future utilities expenditures to the IHA under the mastermeter system.

(c) Proposed conversion to retail service shall be justified on the basis of net savings to the IHA. This determination involves making a comparison between the reduction in utility expense obtained through eliminating the expense to the IHA for IHA-supplied utilities and the resultant allowance for resident-supplied utilities, based on the cost of utility service to the residents after conversion.

§ 950.844 Funding.

The cost to change mastermeter systems to individual metering of resident consumption, including the costs of benefit/cost analysis and complete installation of checkmeters, shall be funded from operating funds of the IHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization project or for funding from any available development funds.

§ 950.845 Order of conversion.

Conversions to individually metered utility service shall be accomplished in the following order when an IHA has projects of two or more of the designated categories, unless otherwise approved by the HUD Area ONAP:

(a) In projects for which retail service is provided by the utility supplier and the IHA is paying all the individual utility bills, no benefit/cost analysis is necessary, and residents shall be billed directly after the IHA adopts revised payment schedules providing appropriate allowances for resident-supplied utilities.

(b) In projects for which checkmeters have been installed but are not being

utilized as the basis for determining utility charges to the residents, no benefit/cost analysis is necessary. The checkmeters shall be used as the basis for utility charges and residents shall be surcharged for excess utility use.

(c) Projects for which meter loops have been installed for utilization of checkmeters shall be analyzed both for the installation of checkmeters and for conversion to retail service.

(d) Low- or medium-rise family units with a mastermeter system should be analyzed for both checkmetering and conversion to retail service, because of their large potential for energy savings.

(e) Low- or medium-rise housing for elderly should next be analyzed for both checkmetering and conversion to retail service, since the potential for energy saving is less than for family units.

(f) Electric service under mastermeters for high-rise buildings, including projects for the elderly, should be analyzed for both use of retail service and of checkmeters.

§ 950.846 Actions affecting residents.

(a) Before making any conversion to retail service, the IHA shall adopt revised payment schedules, providing appropriate allowances for the resident-supplied utilities resulting from the conversion.

(b) Before implementing any modifications to utility services arrangements with the residents or charges with respect thereto, the requisite changes shall be made in resident dwelling leases in accordance with subpart D of this part.

(c) To the extent practicable, IHAs should work closely with resident organizations in making plans for conversion of utility service to individual metering, explaining the national policy objectives of energy conservation, the changes in charges and rent structure that will result, and the goals of achieving an equitable structure that will be advantageous to residents who conserve energy.

(d) A transition period of at least six months shall be provided in the case of initiation of checkmeters, during which residents will be advised of the charges but during which no surcharge will be made based on the readings. This trial period will afford residents ample notice of the effects the checkmetering system will have on their individual utility charges and also afford a test period for the adequacy of the utility allowances established.

(e) During and after the transition period, IHAs shall advise and assist residents with high utility consumption on methods for reducing their usage. This advice and assistance may include

counseling, installation of new energy conserving equipment or appliances, and corrective maintenance.

§ 950.849 Waivers for similar projects.

IHAs with more than one project of similar design and utilities service may prepare a benefit/cost analysis for a representative project. A finding that a change in metering is not cost effective for the representative project is sufficient reason for the HUD Area ONAP to waive the requirements of this subpart for benefit/cost analysis on the remaining similar projects.

§ 950.850 Reevaluations of mastermeter systems.

Because of changes in the cost of utility services and the periodic changes in utility regulations, IHAs with mastermeter systems are required to reevaluate mastermeter systems without checkmeters by making benefit/cost analyses at least every 36 months. HUD Area ONAPs may grant waivers of this requirement upon making a finding as provided in § 950.849.

Resident Utility Allowances

§ 950.860 Applicability.

(a) Sections 950.860 through 950.876 apply to all Indian housing dwelling units, including those operated under the Mutual Help Homeownership Opportunity Program.

(b) In rental units for which utilities are furnished by the IHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption of resident-owned major appliances, or for optional functions of IHA-furnished equipment, in accordance with § 950.865(e), but no utility allowance will be established.

§ 950.865 Establishment of utility allowances by IHAs.

(a) IHAs shall establish allowances for IHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.

(b) The IHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.

(c) The IHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled

surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the IHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and shall provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the IHA and shall be available for inspection by residents.

(d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of IHA operations.

(e) The IHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

§ 950.867 Categories for establishment of allowances.

Separate allowances shall be established for each utility and for each category of dwelling units determined by the IHA to be reasonably comparable as to factors affecting utility usage. The IHA will establish allowances for different size units, in terms of numbers of bedrooms. Other categories may be established at the discretion of the IHA.

§ 950.869 Period for which allowances are established.

(a) *IHA-furnished utilities.* Allowances will normally be established on a quarterly basis; however, residents may be surcharged on a monthly basis. The allowances established may provide for seasonal variations.

(b) *Resident-purchased utilities.* Monthly allowances shall be established at a uniform monthly amount based on an average monthly utility requirement for a year; however, if the utility supplier does not offer residents a uniform payment plan, the allowances established may provide for seasonal variations.

§ 950.870 Standards for allowances for utilities.

(a) The objective of an IHA in designing methods of establishing

utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

(b) Allowances for both IHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the IHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the IHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.

(c) The complexity and elaborateness of the methods chosen by the IHA, in its discretion, to achieve the foregoing objective will depend upon the data available to the IHA and the extent of the administrative resources reasonably available to the IHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.

(d) In establishing allowances, the IHA shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three.

(2) The climatic location of the housing projects.

(3) The size of the dwelling units and the number of occupants per dwelling unit.

(4) Type of construction and design of the housing project.

(5) The energy efficiency of IHA-supplied appliances and equipment.

(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment.

(7) The physical condition, including insulation and weatherization, of the housing project.

(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather.

(9) Temperature of domestic hot water.

§ 950.872 Surcharges for excess consumption of IHA-furnished utilities.

(a) For dwelling units subject to allowances for IHA-furnished utilities

where checkmeters have been installed, the IHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the IHA's average utility rate. The basis for calculating such surcharges shall be described in the IHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the IHA's average utility rate shall not be subject to the advance notice requirements of this section.

(b) For dwelling units served by IHA-furnished utilities where checkmeters have not been installed, the IHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of IHA-furnished equipment. Such surcharge schedules shall state the resident-owned equipment (or functions of IHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the IHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

§ 950.874 Review and revision of allowances.

(a) *Annual review.* The IHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in § 950.870, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the IHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(b) *Revision as a result of rate changes.* The IHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into

account in such revision became effective.

§ 950.876 Individual relief.

Requests for relief from surcharges for excess consumption of IHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the IHA on reasonable grounds, such as special needs of elderly, ill or handicapped residents, or special factors affecting utility usage not within the control of the resident, as the IHA shall deem appropriate. The IHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the IHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the IHA representative with whom initial contact may be made by residents), and the IHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with § 950.865(c) and in the information given to new residents upon admission.

Subpart L—Operation of Projects After Expiration of Initial ACC Term

§ 950.901 Purpose and applicability.

(a) *Purpose.* This subpart L specifies methods for extending the effective period of provisions of the ACC relating to project operation beyond the original ACC term. Such an extension provides a contractual basis for continued eligibility for operating subsidy.

(b) *Applicability.* This subpart L applies to any Indian housing project which is owned by an IHA and is subject to an ACC under section 5 of the United States Housing Act of 1937, including rental, Turnkey III, or Mutual Help housing. However, it does not apply to the Section 8 and Section 23 Housing Assistance Payments Programs and the Section 10(c) and Section 23 Leased Housing Programs.

§ 950.903 Continuing eligibility for operating subsidy; ACC extension.

(a) *Operating subsidy.* After the initial term of the ACC, HUD will pay operating subsidy with respect to a project only in accordance with an ACC amendment providing for extension of the term of the ACC provisions related to project operation for at least ten years after the last payment of HUD assistance. The ACC amendment shall be in the form prescribed by HUD, and shall specify the particular provisions of the ACC that relate to continued project operation and, therefore, remain in effect for the extended ACC term. These

provisions shall include a requirement that the IHA execute and file, for public record, an appropriate document evidencing the IHA's covenant not to convey, encumber or make any other disposition of the project without HUD approval for a period of ten years after the receipt of the last payment of HUD assistance.

(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 subject to the consolidated ACC (see subpart J of this part). Accordingly, if an IHA, before submitting a request for operating subsidy, 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 IHA shall accompany its request with a resolution adopted by the Board of Commissioners certifying that no operating subsidy shall be used with respect to such project(s) thereafter and that all financial records and accounts shall be kept separately for such project(s). In such cases, the removal of the project(s) from the request for operating subsidy shall be reflected by the inclusion of that number of unit months available for the project(s) when making the calculations, under subpart J of this part, for determination of 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 that is ineligible or otherwise excluded from operating subsidy under paragraph (a) of this section. Even if no operating subsidy is received with respect to a project, the IHA 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.

§ 950.905 ACC extension in absence of current operating subsidy.

Where no operating subsidy is being paid under an ACC, the IHA shall, at least one year before the anticipated ACC expiration date for the project, notify the Area ONAP as to whether or not the IHA 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 Area ONAP in the form of a resolution by the IHA's Board of

Commissioners. If the IHA 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 IHA does desire to maintain a basis for such operating subsidy payments, the resolution shall include the IHA'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 the Area ONAP's receipt of the request, HUD and the IHA shall enter into an ACC amendment effecting the extension for the period requested by the IHA, unless HUD finds that continued operation of the project cannot be justified under the standards set forth in subpart M of this part.

§ 950.907 HUD approval of disposition or demolition.

During the post-assistance service period of continued operation as low-income housing, HUD may authorize an IHA to dispose of or demolish housing units at any time, in accordance with subpart M of this part.

Subpart M—Disposition or Demolition of Projects

§ 950.921 Purpose and applicability.

(a) *Purpose.* This subpart M sets forth requirements for HUD approval of an IHA's application to dispose of or demolish (in whole or in part) IHA-owned projects assisted under the Act. The rules and procedures contained in 24 CFR part 85 are inapplicable.

(b) *Applicability.* (1) *Type of projects.* This subpart M applies to any Indian housing project that is owned by an IHA and is subject to an ACC under section 5 of the United States Housing Act of 1937 (42 U.S.C. 1437c), including rental, Turnkey III, or Mutual Help housing. This subpart M does not apply to:

(i) IHA-owned Section 8 housing or housing leased under section 10(c) or section 23 of the Act (42 U.S.C. 1437h(c) or 1437u);

(ii) Demolition or disposition before the end of the initial operating period (EIOP), as determined under the ACC, of property acquired incident to the development of an Indian housing project (however, this exception does not apply to units occupied or available for occupancy by Indian housing tenants before EIOP);

(iii) Conveyance of Indian housing for the purpose of providing

homeownership opportunities for low-income families under section 21 of the Act, the Turnkey III or Mutual Help Homeownership Opportunity programs, or any other homeownership programs established under sections 5(h) and 6(c)(4)(D) of the Act (42 U.S.C. 1437c(h), 1437d(c)(4)(3)) or titles II and III of the Act (42 U.S.C. 1437aa, 1437aaa).

(iv) Leasing of dwelling or nondwelling space incident to the normal operation of the project for Indian housing purposes, as permitted by the ACC;

(v) Easements, rights-of-way, and transfers of utility systems incident to the normal operation of the project for Indian housing purposes, as permitted by the ACC;

(vi) Reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units) without demolition; and

(vii) A whole or partial taking by a public or quasi-public entity through the exercise of its power of eminent domain.

(2) [Reserved].

(c) *Type of actions.* Any action by an IHA to dispose of or demolish an Indian housing project or a portion of an Indian housing project is subject to the requirements of this subpart M. Until such time as HUD approval may be obtained, the IHA may not take any action to dispose of or demolish an Indian housing project or portion of an Indian housing project, and the IHA shall continue to meet its ACC obligations to maintain and operate the property as housing for low-income families. This does not mean that HUD approval under this subpart M is required for planning activities, analysis, or consultations, such as project viability studies, comprehensive modernization planning, or comprehensive occupancy planning.

§ 950.923 General requirements for HUD approval of disposition or demolition.

(a) For purposes of this subpart M, the term "tenant" will also include "homebuyer" when the development involved is a homeownership project; and the term "unit of general government" will include the tribal government, when applicable.

(b) HUD will not approve an application for disposition or demolition unless:

(1) The application has been developed in consultation with tenants of the project involved, any tenant organizations for the project, and any IHA-wide tenant organizations that will be affected by the disposition or demolition;

(2) The IHA has complied with the requirement to offer the project or portion of the project proposed for demolition or disposition to the resident organizations as required under § 950.925;

(3) The application contains a certification by the chief executive officer, or designee, that the unit of general government will comply with displacement, relocation, and real property acquisition policies described in § 950.117;

(4) Demolition or disposition (including any related replacement housing plan) will meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the National Historic Preservation Act of 1966 (16 U.S.C. 469), and related laws, as stated in HUD's regulations at 24 CFR part 50. When the site of the replacement housing is unknown at the time of submission of the application for demolition or disposition, the application shall contain a certification that the applicant agrees to assist HUD to comply with 24 CFR part 50, and that the applicant shall:

(i) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50;

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire, rehabilitate, convert, lease, repair, or construct property, or commit HUD funds or other funds to such program activities with respect to any eligible property, until HUD approval is received.

(5) The IHA has developed a replacement housing plan, in accordance with § 950.935, and has obtained a commitment for the funds necessary to carry out the plan over the approved schedule of the plan. To the extent such funding is not provided from other sources (e.g., State, tribal, or local programs or proceeds of disposition), HUD approval of the application for demolition or disposition is conditioned on HUD's agreement to commit the necessary funds (subject to availability of future appropriations).

§ 950.925 Resident organization opportunity to purchase.

(a) *Applicability.* (1) This section applies to applications for demolition or disposition of a development which involve dwelling units, nondwelling spaces (e.g., administration and community buildings, maintenance facilities), and excess land.

(2) The requirements of this section do not apply to the following cases which it has been determined do not present appropriate opportunities for resident purchase:

(i) The IHA has determined that the property proposed for demolition is an imminent threat to the health and safety of residents;

(ii) The tribal or local government has condemned the property proposed for demolition;

(iii) A tribal or local government agency has determined and notified the IHA that units shall be demolished to allow access to fire and emergency equipment;

(iv) The IHA has determined that the demolition of selected portions of the development in order to reduce density is essential to ensure the long-term viability of the development or the IHA (but in no case should this be used cumulatively to avoid Section 412 requirements); or

(v) A public body has requested to acquire vacant land that is less than two acres in order to build or expand its services (e.g., a tribal or local government wishes to use the land to build or establish a police substation).

(3) In the situations listed in paragraph (a)(2) of this section, the IHA may proceed to submit its request to demolish or dispose of the property, or the portion of the property, to HUD, in accordance with section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart without affording an opportunity for purchase by a resident organization. However, resident consultation would be required in accordance with § 950.923(b)(1). The IHA shall submit written documentation, on official stationery, with date and signatures to justify paragraphs (a)(2)(i) through (v) of this section. Examples of such documentation include:

(i) A certification from a tribal or local agency, such as the fire or health department, that a condition exists in the development that is an imminent threat to residents; or

(ii) A copy of the condemnation order from the local health department. If, however, at some future date, the IHA proposes to sell the remaining property described in paragraphs (a)(2)(i) through (iii) of this section, the IHA will be required to comply with this section.

(b) *Opportunity for residents to organize.* Where the affected development does not have an existing resident organization, resident management corporation or resident cooperative at the time of the IHA proposal to demolish or dispose of the development or a portion of the

development, the IHA shall make a reasonable effort to inform residents of the development of the opportunity to organize and purchase the property proposed for demolition or disposition. Examples of "reasonable effort" at a minimum include at least one of the following activities: convening a meeting, sending letters to all residents, publishing an announcement in the resident newsletter, where available, or hiring a consultant to provide technical assistance to the residents. HUD will not approve any application that cannot demonstrate that the IHA has allowed at least 45 days for the residents of the affected development to organize a resident organization. The IHA should initiate its efforts to inform the residents of their right to organize as an integral part of the resident consultation requirement under § 950.923(b)(1).

(c) *Established organizations.* Where there are duly formed resident management corporations, resident organizations or resident cooperatives at the affected development, the IHA should follow the procedures beginning in paragraph (d) of this section. Where the affected development is fully or partially occupied, the residents shall be given the opportunity to form under the procedures in paragraph (b) of this section.

(d) *Offer of sale to resident organizations.* (1) The IHA shall make the formal offer for sale which shall include the information listed in this section. All contacted organizations shall have 30 days to express an interest in the offer. The IHA shall offer to sell the property proposed for demolition or disposition to the resident management corporation, the resident organization or resident cooperative of the affected development under at least as favorable terms and conditions as the IHA would offer it for sale to another purchaser. The offer shall include:

(i) An identification of the development, or portion of the development, in the proposed demolition or disposition, including the development number and location, the number of units and bedroom configuration, the amount of space and use for non-dwelling space, the current physical condition (e.g., fire damaged, friable asbestos, lead based paint test results), and occupancy status (e.g., percent occupancy);

(ii) In the case of disposition, a copy of the appraisal of the property and any terms of sale;

(iii) An IHA disclosure and description of plans proposed for reuse of land, if any, after the proposed demolition or disposition;

(iv) An identification of available resources (including its own and HUD's) to provide technical assistance to the resident management corporation, resident organization or resident cooperative of the affected development to enable the organization to better understand its opportunity to purchase the development, the development's value and potential use;

(v) Any and all terms of sale that the IHA requires for the Section 18 action; [If the resident management corporation, resident organization or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the IHA may consider accepting the offer.]

(vi) A date by which the resident management corporation, resident organization or resident cooperative of the affected development shall respond to the IHA's offer to sell the property proposed for demolition or disposition, which shall be no less than 30 days from the date of the official offering of the IHA which will be made sometime after the meeting. The response from the resident management corporation, resident organization or resident cooperative of the affected development shall be in the form of a letter expressing its interest in accepting the IHA's written offer.

(vii) A statement that the resident management corporation, resident organization and resident cooperative of the affected development will be given up to 60 days to develop and submit a proposal to the IHA to purchase the property and to obtain a firm financial commitment. It shall explain that the IHA shall approve the proposal from the resident management corporation, resident organization or resident cooperative of the affected development, if it meets the terms of sale. However, the statement shall indicate that the IHA can consider accepting an offer from the resident management corporation, resident organization or resident cooperative of the affected development that is other than the terms of sale; e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership. The statement shall explain that if the IHA receives more than one proposal from a resident management corporation, resident organization or resident cooperative at the affected development, the IHA shall select the proposal that meets the terms of sale. In the event that two proposals from the affected development meet the

terms of sale, the IHA shall choose the best proposal.

(2) After the 30 day time frame for the resident management corporation, resident organization or resident cooperative of the affected development to respond to the notification letter has expired, the IHA is to prepare letters to those organizations that responded affirmatively inviting them to submit a formal proposal to purchase the property. The organization has up to 60 days from the date of its affirmative response to prepare and submit a proposal to the IHA that provides all the information requested in paragraph (d)(1) of this section and meets the terms of sale.

(e) *IHA review of proposals.* The IHA has up to 60 days from the date of receipt of the proposals to review them and determine whether they meet the terms of sale set forth in its offer. If the resident management corporation, resident organization or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than the fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the IHA may consider accepting the offer. If the terms of sale are met, within 14 days of the IHA's final decision, the IHA shall notify the resident management corporation, resident organization or resident cooperative of the affected development of that fact and that the proposal has been accepted or rejected.

(f) *Appeals.* The resident management corporation, resident organization or resident cooperative of the affected development has the right to appeal the IHA's decision to the HUD Area ONAP. A written appeal shall be made within 30 days of the decision by the IHA. The appeal should include copies of the proposal and any related correspondence. The HUD Area ONAP will render a final decision within 30 days. A letter communicating the decision is to be prepared and sent to the IHA and the resident management corporation, resident organization or resident cooperative of the affected development.

(g) *Contents of proposal.* (1) The proposal from the resident management corporation, resident organization or resident cooperative of the affected development shall at a minimum include the following:

(i) The length of time the organization has been in existence;

(ii) A description of current or past activities which demonstrate the organization's organizational and management capability or the planned

acquisition of such capability through a partner or other outside entities;

(iii) A statement of financial capability;

(iv) A description of involvement of any non-resident organization (non-profit, for-profit, governmental or other entities), if any, the proposed division of responsibilities between the two, and the non-resident organization's financial capabilities;

(v) A plan for financing the purchase of the property and a firm commitment for funding resources necessary to purchase the property and pay for any necessary repairs;

(vi) A plan for the use of the property;

(vii) The proposed purchase price in relation to the appraised value;

(viii) Justification for purchase at less than the fair market value in accordance with § 950.931(h), if appropriate;

(ix) Estimated time schedule for completing the transaction;

(x) The response to the IHA's terms of sale;

(xi) A resolution from the resident organization approving the proposal; and

(xii) A proposed date of settlement, generally not to exceed six months from the date of IHA approval of the proposal, or such period as the IHA may determine to be reasonable.

(2) If the proposal is to purchase the property for homeownership under section 5(h) or HOPE 1, then the requirements of section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart do not apply, and the applicable requirements shall be those under the HOPE 1 guidelines, as set forth at 24 CFR Subtitle A, App. A, or the section 5(h) regulation, as set forth in subpart P of this part. In order for the IHA to consider a proposal to purchase under section 412, using homeownership opportunities under section 5(h) or HOPE 1, the resident management corporation, organization or resident cooperative of the affected development shall meet the provisions of this subsection, including items in paragraph (g)(1) of this section.

(3) If the proposal is to purchase the property for other than the aforementioned homeownership programs or for uses other than homeownership, then the proposal shall meet all the disposition requirements of section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart.

(h) *IHA Obligations.* (1) Prepare and disperse the formal offer of sale to the resident management corporation, resident organization and resident cooperative of the affected development.

(2) Evaluate proposals received and make the selection based on the considerations set forth in paragraph (b) of this section. Issue letters of acceptance and rejection.

(3) Prepare certifications, where appropriate, as discussed in paragraph (j)(3) of this section. The IHA shall comply with its obligations under § 950.923(b)(1) regarding tenant consultation and provide evidence to HUD that it has met those obligations. The IHA shall not act in an arbitrary manner and shall give full and fair consideration to any qualified resident management corporation, resident organization or resident cooperative of the affected development and accept the proposal if it meets the terms of sale.

(i) *IHA application submission requirements for proposed demolition or disposition.* (1) If the proposal from the resident organization is rejected by the IHA, and either there is no appeal by the organization or the appeal has been denied, the IHA shall submit its demolition or disposition application to HUD in accordance with section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart. The demolition or disposition application shall include complete documentation that the requirements of this section have been met. IHAs shall submit written documentation that the resident management corporation, resident organization and resident cooperative of the affected development have been apprised of their opportunity to purchase under this section. This documentation shall include a copy of the signed and dated IHA notification letter(s) to each organization informing them of the IHA's intention to submit an application for demolition or disposition and the responses from each organization.

(2) If the IHA accepts the proposal of the resident organization, the IHA shall submit a disposition application in accordance with section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart, with appropriate justification for a negotiated sale and for sale at less than fair market value, if applicable.

(3) HUD will not process an application for demolition or disposition unless the IHA provides HUD with one of the following:

(i) Where no resident management corporation, resident organization or resident cooperative exists in the affected development and the residents of the affected development have not formed a new organization, a certification from either the executive director or the board of commissioners stating that no such organization(s)

exists and documentation that a reasonable effort to inform residents of their opportunity to organize has been made; or

(ii) Where a resident management corporation, resident organization or resident cooperative exists in the affected development one of the following, either paragraph (i)(3)(ii)(A) or (B) of this section:

(A) A board resolution or its equivalent from each resident management corporation, resident organization or resident cooperative stating that such organization has received the IHA letter, and that it understands the offer and waives its opportunity to purchase the project, or portion of the project, covered by the demolition or disposition application. The response should clearly state that the resolution was adopted by the entire organization at a formal meeting; or

(B) A certification from the executive director or board of commissioners of the IHA that the thirty (30) day timeframe has expired and no response was received to its offer.

§ 950.927 Specific criteria for HUD approval of disposition requests.

In addition to other applicable requirements of this subpart, HUD will not approve a request for disposition unless HUD determines that retention is not in the best interests of the tenants and the IHA, because at least one of the following criteria is met:

(a) Developmental changes in the area surrounding the project adversely affect the health or safety of the tenants or the feasible operation of the project by the IHA.

(b) Disposition will allow the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing projects, and that will preserve the total amount of low-income housing stock available to the community.

(c) There are other factors justifying disposition that HUD determines are consistent with the best interests of the tenants and the IHA that are not inconsistent with other provisions of the Act.

(d) In the case of disposition of property other than dwelling units:

(1) The property is determined by HUD to be excess to the needs of the project (after the end of the initial operating period); or

(2) The disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the project.

§ 950.928 Specific criteria for HUD approval of demolition requests.

In addition to other applicable requirements of this subpart, HUD will not approve an application for demolition unless HUD determines that at least one of the following criteria is met:

(a) In the case of demolition of all or a portion of a project, the project, or a portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes; and

(b) No reasonable program of modifications, in keeping with the provisions of subpart I of this part, is feasible to return the project or portion of the project to useful life.

§ 950.931 IHA application for HUD approval.

Written approval by HUD shall be required before the IHA may undertake any transaction involving demolition or disposition. To request approval, the IHA shall submit an application to the HUD Area ONAP that includes the following:

(a) A description of the property involved;

(b) A description of, as well as a timetable for, the specific action proposed (including, in the case of disposition, the specific method proposed);

(c) A statement justifying the proposed disposition or demolition under one or more of the applicable criteria of §§ 950.927 or 950.928;

(d) If applicable, a plan that meets the requirements of § 950.117 for the relocation of tenants who would be displaced by the proposed demolition or disposition;

(e) A description of the IHA's consultations with tenants and any tenant organizations (as required under § 950.923(b)(1)), with copies of any written comments which may have been submitted to the IHA and the IHA's evaluation of the comments;

(f) A replacement housing plan, as required under § 950.935, and a resolution by the governing body of the unit of tribal or general local government in which the project is located, indicating approval of the replacement plan;

(g) Evidence that the IHA has complied with the requirement to offer the project or portion of the project proposed for demolition or disposition to the resident organizations, as required under § 950.925;

(h) The estimated balance of project debt, if any, under the ACC for development and modernization;

(i) In the case of disposition, an estimate of the fair market value of the

property, established on the basis of one independent appraisal, unless, as determined by HUD:

(1) More than one appraisal is warranted; or

(2) Another method of valuation is clearly sufficient and the expense of an independent appraisal is unjustified because of the limited nature of the property interest involved or other available data;

(j) In the case of disposition, estimates of the gross and net proceeds to be realized, with an itemization of estimated costs to be paid out of gross proceeds and the proposed use of any net proceeds in accordance with § 950.933;

(k) A copy of a resolution by the IHA's Board of Commissioners approving the application;

(l) If determined to be necessary by HUD, an opinion by the IHA's legal counsel that the proposed action is consistent with applicable requirements of Federal, State, tribal, and local laws; and

(m) Any additional information necessary to support the application and assist HUD in making determinations under this subpart M.

§ 950.933 Use of proceeds.

(a) *Disposition.* (1) If HUD approves the disposition of real property of a project, in whole or in part, the IHA shall dispose of it promptly by public solicitation of bids for not less than fair market value, unless HUD authorizes negotiated sale for reasons found to be in the best interests of the IHA or the Federal Government, or for sale for less than fair market value (where permitted by State, tribal, or local law), based on commensurate public benefits to the community, the IHA, or the Federal Government justifying such an exception.

(2) Net proceeds (after payment of HUD-approved costs of disposition and relocation under paragraph (a) of this section) shall be used, subject to HUD approval, as follows: first for the retirement of outstanding obligations, if any, issued to finance development or modernization of the project, which in the case of scattered site housing of an IHA, shall be in an amount that bears the same ratio to the total of such costs and obligations as the number of units disposed of bears to the total number of units of the project at the time of disposition; and thereafter for the provision of housing assistance for low-income families, through such measures as modernization of low-income housing or the acquisition, development, or rehabilitation of other

properties to operate as low-income housing.

(b) *Demolition.* If HUD has approved demolition of a project, or a portion of a project, and the proposed action is part of a modernization program under subpart I of this part, the costs of demolition and of relocation of displaced tenants may be included in the modernization budget.

§ 950.935 Replacement housing plan.

(a) HUD may not approve an application or furnish assistance under this subpart unless the IHA submitting the application for disposition or demolition also submits a plan for the provision of an additional decent, safe, sanitary, and affordable dwelling unit (at rents no higher than permitted under the Act) for each dwelling unit to be disposed of or demolished under the application. The plan shall include any one or a combination of the following:

(1) The acquisition or development of additional low-income housing dwelling units;

(2) The use of project-based assistance under section 8 (as provided for in 24 CFR part 882, subpart G);

(3) The use of project-based assistance under other Federal programs;

(4) The acquisition or development of dwelling units assisted under a State or local tribal government program that provides for project-based assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract to assistance under section 8(b)(1) of the Act; or

(5) The use of tenant-based assistance under section 8 of the Act (excluding vouchers under section 8(o) of the Act (42 U.S.C. 1437f(o)), under the conditions described in paragraph (b) of this section.

(b) Tenant-based assistance under section 8 may be approved under the replacement plan only if:

(1) There is a finding by HUD that replacement with project-based assistance is not feasible; that the supply of private rental housing actually available to those who would receive project-based assistance under the plan is sufficient for the total number of certificates and vouchers available in the community after implementation of the plan; and that this available housing supply is likely to remain available for the full term of the assistance; and

(2) HUD's findings under paragraph (b)(1) of this section are based on objective information, which shall include rates of participation by landlords in the Section 8 program; size, condition, and rent levels of available rental housing as compared to Section 8 standards; the supply of vacant existing

housing meeting the Section 8 housing quality standards with rents at or below the fair market rent or the likelihood of adjusting the fair market rent; the number of eligible families waiting for housing assistance under the Act; the extent of discrimination practiced against the types of individuals or families to be served by the assistance; and such additional data as HUD may determine to be relevant in particular circumstances.

(c) The plan shall be approved by the unit of general local government (including tribal government) in which the project is located.

(d) The plan shall include a schedule for carrying out all its terms within a period consistent with the size of the proposed disposition or demolition, except that the schedule for completing the plan shall in no event exceed six years from the date specified to begin plan implementation.

(e) The plan shall include a method that ensures that at least the same total number of individuals and families will be provided housing, allowing for replacement with units of different sizes to accommodate changes in local priority needs.

(f) The plan shall include an assessment of the suitability of the location of proposed replacement housing based upon application of the site selection criteria established in § 950.235.

(g) The plan shall contain assurances that any replacement units acquired, newly constructed, or rehabilitated will meet the applicable accessibility requirements set forth in 24 CFR 8.25.

Subpart N—[Reserved]

Subpart O—Resident Participation and Opportunities General Provisions

§ 950.960 Purpose.

The purpose of this subpart O is to recognize the importance of involving residents in creating a positive living environment and in contributing to the successful operation of Indian housing.

§ 950.961 Applicability and scope.

(a) This subpart O applies to any Indian housing authority (IHA) that has an Annual Contributions Contract (ACC) with the Department. This subpart does not apply to housing assistance payments under section 8 of the United States Housing Act of 1937.

(b) This subpart O contains HUD's policies, procedures, and requirements for the participation of Indian housing residents in Indian housing management.

(c) This subpart O is designed to encourage increased resident participation in Indian housing.

(d) This subpart O is not intended to negate any pre-existing arrangements for resident management in Indian housing between an IHA and a resident management corporation.

(e) This subpart O includes requirements for the Family Investment Centers (FIC) Program, which was established by Section 515 of the National Affordable Housing Act, which created a new Section 22 of the Act. The FIC program is designed to provide families living in Indian housing with better access to educational and employment opportunities.

§ 950.962 Definitions.

Family Investment Center. A facility in or near Indian housing which provides families living in Indian housing with better access to educational and employment opportunities to achieve self sufficiency and independence.

Management. All activities for which the IHA is responsible to HUD under the ACC, within the definition of "operation" under the Act and the ACC, including the development of resident programs and services.

Management contract. A written agreement between a resident management corporation and an IHA, as provided by § 950.969.

Project. For purposes of this subpart, any of the following could be the subject of a management contract:

- (1) One or more contiguous buildings.
- (2) An area of contiguous row houses.
- (3) Scattered site buildings.
- (4) Scattered site single-family units.

Resident management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the IHA.

Resident Management Corporation (RMC). A Resident Management Corporation is an entity that proposes to enter into, or enters into, a contract to manage IHA property. The corporation shall have each of the following characteristics:

(1) It shall be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization, so long as each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation.

(3) It shall have an elected Board of Directors.

(4) Its by-laws shall require the Board of Directors to include representatives of each resident organization involved in establishing the corporation.

(5) Its voting members are required to be residents of the project or projects it manages.

(6) It shall be approved by the resident organization. If there is no organization, a majority of the households of the project or projects shall approve the establishment of such an organization.

Resident Organization (RO). A Resident Organization (or "Resident Council" as defined in section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It shall consist of residents only, and only residents may vote.

(2) If it represents residents in more than one development or in all of the developments of an IHA, it shall fairly represent residents from each development that it represents.

(3) It shall adopt written procedures providing for the election of specific officers on a regular basis.

(4) It shall have a democratically elected governing board. The voting membership of the board shall consist solely of the residents of the development or developments that the RO represents.

Resident-owned business. Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

Resident participation. A process of consultation between residents and the IHA concerning matters affecting the management of Indian housing.

§ 950.963 HUD's role in activities under this subpart.

(a) *General.* Subject to the requirements of this part and other requirements imposed on IHAs by the ACC, statute or regulation, the form and extent of resident participation or resident management are local decisions to be made jointly by ROs and the IHAs.

(b) *Duty to bargain in good faith.* If an IHA refuses to negotiate with a RMC in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and

providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the IHA to respond with a report stating the IHA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

§ 950.964 Resident participation requirements.

(a) *IHA responsibilities.* (1) An IHA shall provide the residents or any resident organization with current information concerning the IHA's policies on resident participation in management, including guidance on information and recognition of a RO, and, where appropriate, a RMC.

(2) An IHA shall consult with residents or resident organizations (if they exist), to determine the extent to which residents desire to participate in the management of their housing and the specific methods that may be mutually agreeable to the IHA and the residents.

(3) When requested by residents, an IHA shall provide appropriate guidance to residents to assist them in establishing and maintaining a RO, and, where appropriate, a RMC.

(b) *Recognition.* A resident organization may request that it be recognized as the official organization representing the residents in meetings with the IHA or with other entities.

(c) *Written understanding.* At a minimum, the IHA and the RO shall put in writing their understanding concerning the elements of their relationship.

(d) *Conflict of interest.* Resident council officers can not serve as contractors or employees if they are in policy making or supervisory positions at the IHA.

§ 950.965 Funding resident participation.

Funding will be provided under subpart J of this part, for the following:

(a) *Resident Organizations.* (1) Subject to appropriations, the IHA shall provide

funds to ROs for resident participation activities. Eligibility to receive operating subsidy for duly elected RO activities at \$25 per unit per year is an additional category of subsidy eligibility for units represented by a duly elected resident organization under the Performance Funding System. Of this amount, \$15 per unit per year shall fund resident participation activities of the duly elected ROs. Ten dollars per unit per year shall fund IHA costs incurred in carrying out resident participation activities.

(2) The IHA and the duly elected resident organization at each development shall collaborate on how the funds will be distributed for resident participation activities. If disputes regarding funding decisions arise between the parties, the matter shall be referred to the HUD Headquarters for intervention. HUD ONAP Headquarters may require the parties to undertake further negotiations to resolve the dispute. If no resolution is achieved within 90 days from the date of renegotiation, Headquarters shall take appropriate actions to settle the dispute in a fair and equitable manner.

(b) *Stipends.* (1) IHAs may provide stipends to officers of the duly elected RO. The stipend, which may be up to \$200 per month per officer, shall be decided locally by the ROs and the IHA. Subject to appropriations, the stipends will be funded from the portion of the operating subsidy funding for RO expenses (\$15.00 per unit per year). (See definition of annual income in § 950.102 for exclusion for these stipends.)

(2) Funding provided by an IHA to a duly elected RO may be made only under a written agreement between the IHA and a RO, which includes a RO budget and assurance that all RO expenditures will not contravene provisions of law and will promote serviceability, efficiency, economy and stability in the operation of the local development. The agreement shall require the local RO to account to the IHA for the use of the funds and permit the IHA to inspect and audit the resident council's financial records related to the agreement.

Tenant Opportunities Program

§ 950.966 General.

The Indian Tenant Opportunities Program (TOP) (which is the program similar to the public housing TOP for public housing residents) provides technical assistance for various activities including resident management for ROs/RMCs as authorized by Section 20 of the Act. The TOP provides opportunities for RO/

RMCs to improve living conditions and resident satisfaction in Indian housing communities.

§ 950.967 Eligible TOP activities.

Activities to be funded and carried out by an eligible RO or resident management corporation, as defined in subpart B of this part, shall improve the living conditions and Indian housing operations and may include any combination of, but are not limited to, the following:

(a) *Resident Capacity Building.* (1) Training Board members in community organizing, Board development, and leadership training;

(2) Determining the feasibility of resident management enablement for a specific project or projects; and

(3) Assisting in the actual creation of a RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(b) *Resident Management.* (1) Training residents, as potential employees of a RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(2) Training of residents with respect to fair housing requirements; and

(3) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(c) *Resident Management Business Development.* (1) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(2) Technical assistance and training in resident managed business development through:

- (i) Feasibility and market studies;
- (ii) Development of business plans;
- (iii) Outreach activities; and
- (iv) Innovative financing methods including revolving loan funds.

(3) Legal advice in establishing a resident managed business entity.

(d) *Social Support Needs (such as self-sufficiency and youth initiatives).*

(1) Feasibility studies to determine training and social services needs;

(2) Training in management-related trade skills, computer skills, etc;

(3) Management-related employment training and counseling;

(4) Coordination of support services;

(5) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(6) Training programs on health, nutrition, and safety;

(7) Training in the development of strategies to successfully implement a youth program. For example, assessing

the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing authority staff, resident management corporations, and resident organizations on youth initiatives and program activities; and

(8) Workshops for youth services, child abuse and neglect prevention, tutorial services, in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire, and Big Brother/Big Sisters. Other HUD programs such as the Youth Sports Program and the Public Housing Drug Elimination Programs also provide funding in these areas.

(e) *Homeownership Opportunity.* Determining feasibility for homeownership by residents, including assessing the feasibility of other housing (including HUD owned or held single or multi-family) affordable for purchase by residents.

(f) *General.* (1) Required training on HUD regulations and policies governing the operation of low-income public and Indian housing including contracting/procurement regulations, financial management, capacity building to develop the necessary skills to assume management responsibilities at the development and property management;

(2) Purchasing hardware, i.e., computers and software, office furnishings and supplies, in connection with business development. Every effort shall be made to acquire donated or discounted hardware;

(3) Training in accessing other funding sources; and

(4) Hiring trainers or other experts. RO/RMCs shall ensure that this training is provided by a qualified housing management specialist, a community organizer, the IHA, or other sources knowledgeable about the program.

§ 950.968 Technical assistance.

To the extent that grant authority is available, HUD shall provide financial assistance to ROs or RMCs that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of these entities; the development of the management capabilities of newly formed or existing entities; the identification of the social support needs of residents of projects, and the securing of this support; and a wide range of activities to further the purposes of this subpart O.

§ 950.969 Resident management requirements.

The following requirements apply when an IHA and its residents are

interested in providing for resident performance of management functions in one or more projects under this subpart O.

(a) *Resident management corporation.* Residents interested in contracting with an IHA shall establish a RMC that meets the requirements for such a corporation, as required in this subpart O.

(b) *Management Contract.* (1) A management contract between the IHA and a RMC is required for resident management. The IHA and the corporation may agree to the performance by the corporation of any or all management functions for which the IHA is responsible to HUD under the ACC, and any other functions not inconsistent with the ACC and applicable laws and regulations. The management contract shall be in conformance with the minimum requirements established by HUD.

(2) The management contract may include specific provisions governing management personnel; compensation for maintenance laborers and mechanics and administrative employees employed in the operation of the project, except that the amount of this compensation shall meet applicable labor standard requirements of Federal law; rent collection procedures; resident income verification; resident eligibility determinations; resident eviction; the acquisition of supplies and materials; and such other matters as the IHA and the corporation determine to be appropriate, and as HUD may specify in administrative instructions.

(3) The management contract shall be treated as a contracting out of services, and shall be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the IHA is subject.

(4) Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the ACC do not apply to the decision of an IHA to contract with a RMC.

(c) *Prohibited activities.* An IHA may not contract for assumption by the RMC of the IHA's underlying responsibilities to HUD under the ACC.

(d) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC shall provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the IHA) to protect HUD and the IHA against loss, theft, embezzlement, or fraudulent acts on the part of the corporation or its employees.

§ 950.970 Management specialist.

The RO shall select, in consultation with the IHA, a qualified Indian housing

management specialist to assist in determining the feasibility of, and to help establish, a RMC and to provide training and other duties in connection with operating the TOP project. The Housing Management Specialist (Trainer) can be a non-profit organization, the IHA or a consultant.

§ 950.971 Operating subsidy, preparation of operating budget, operating reserves, and retention of excess revenues.

(a) *Calculation of operating subsidy.* Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the IHA in accordance with subpart J of this part, with the following exceptions:

(1) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart O. These expenditures will include the project's share of any expenses which are overhead or centralized IHA expenditures. The expenses shall represent a normal year's expenditures for the project, and shall exclude all expenditures that are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level shall be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned Indian housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects, in accordance with subpart J of this part.

(2) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart O, increased by the estimate of inflation of resident income used in calculating PFS subsidy.

(3) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities of the corporation or facilities operated by the corporation.

(4) Any reduction in the subsidy of an IHA that occurs as a result of fraud, waste, or mismanagement by the IHA shall not affect the subsidy calculation

for the resident management corporation project.

(b) *Calculation of total income and preparation of operating budget. No reduction.* (1) Subject to paragraph (c) of this section, the amount of funds provided by an IHA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on the date a resident management corporation first assumes management responsibility for the project.

(2) *Treatment of technical assistance.* For purposes of determining the amount of funds provided to a project under paragraph (b)(1) of this section, the provision of technical assistance by the IHA to the resident management corporation will not be included.

(3) *Operating budget.* The resident management corporation and the IHA shall submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with paragraph (a) of this section, for the project managed by a resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to functions which will continue to be performed by the IHA.

(4) *Operating reserves.* (i) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host IHA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available in the IHA operating reserve, exclusive of all inventories, prepaids, and receivables (at the end of the IHA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's subaccount.

(ii) The use of the reserve will be subject to all administrative procedures generally applicable to the Indian housing program. Any expenditure of

funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(iii) Investment of funds held in the reserve will be in accordance with the provisions of chapter 4 of the Financial Management Handbook, 7475.1 REV, and interest generated will be included in the calculation of operating subsidy in accordance with subpart J of this part.

(c) *Adjustments to total income.* (1) Operating subsidy will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the project.

(2) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with paragraph (a) of this section, the contract may specify that income be provided to the project from other sources of income of the IHA.

(3) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart O:

(i) Any reduction in the total income of an IHA that occurs as a result of fraud, waste, or mismanagement by the IHA; or

(ii) Any change in the total income of an IHA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart O.

(d) *Retention of excess revenues.* Any income generated by a resident management corporation that exceeds the income estimated for the income category involved shall be excluded in subsequent years in calculating:

(1) The operating subsidy provided to an IHA under subpart J of this part; and

(2) The funds provided by the IHA to the resident management corporation.

(e) *Use of retained revenues.* Any revenues retained by a resident management corporation under paragraph (d) of this section may only be used for purposes of improving the maintenance and operation of the project, establishing business enterprises that employ residents of Indian housing, or acquiring additional dwelling units for low-income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

§ 950.972 TOP Audit and administrative requirements.

(a) *Annual audit of financial statements.* The financial statements of a RMC managing a project under this subpart shall be audited annually by a

licensed certified public accountant, designated by the RMC, in accordance with generally accepted government audit standards. A written report of each audit shall be forwarded to HUD and the IHA within 30 days of issuance.

(b) *Relationship to other authorities.* The requirements of paragraph (a) of this section are in addition to any other Federal law or other requirement that would apply to the availability and audit of financial statements of RMCs under this part.

(c) *General administrative requirements.* Except as modified by this part, RMCs shall comply with the requirements of OMB Circulars A-110 and A-122, as applicable.

Family Investment Centers (FIC) Program

§ 950.980 General.

(a) *The Family Investment Centers (FIC) Program.* This program provides families living in Indian housing with better access to educational and employment opportunities by:

(1) developing facilities in or near Indian housing for training and support services;

(2) mobilizing public and private resources to expand and improve the delivery of such services;

(3) providing funding for such essential training and support services that cannot otherwise be funded; and

(4) improving the capacity of management to assess the training and service needs of families, coordinating the provision of training and services that meet such needs, and ensuring the long-term provision of such training and services.

(b) *Supportive Services.* New or significantly expanded services essential to providing families in Indian housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. IHAs applying for funds to provide supportive services shall demonstrate that the services will be provided at a higher level than currently provided. Supportive services may include:

(1) Child care;

(2) Employment training and counseling;

(3) Computer skills training;

(4) Education including remedial education; literacy training; completion of secondary or post secondary education and assistance in the attainment of certificates of high school equivalency;

(5) Business, entrepreneurial training and counseling;

(6) Transportation necessary to enable any participating family member to

receive available services or to commute to his/her place of employment;

(7) Personal welfare (e.g. substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(8) Supportive Health Care Services (e.g., outreach and referral services); and

(9) Any other services and resources, including case management, determined to be appropriate in assisting eligible residents.

(c) *FIC Service Coordinator.* Any person who is responsible for:

(1) Determining the eligibility and assessing needs of families to be serviced by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding;

(5) Monitoring and evaluating the delivery, impact and effectiveness of any supportive service funded with capital or operating assistance under the FIC program;

(6) Coordinating the development and implementation of the FIC Program with other self-sufficiency, educational and employment programs; and

(7) performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

§ 950.982 Eligibility.

An IHA may apply to establish one or more FICs for more than one Indian housing development. An IHA shall demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities.

§ 950.983 FIC activities.

Activities that may be funded and carried out by an eligible IHA may include:

(a) The renovation, conversion, or combination of vacant dwelling units to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas to accommodate the provision of supportive services;

(c) The acquisition, construction, or renovation of facilities located near the premises of one or more IHA developments to accommodate the provision of supportive services;

(d) The provision of not more than 15 percent of the total cost of supportive

services (which may be provided directly to eligible residents by the IHA or by contract or lease through other appropriate agencies or providers), but only if the IHA demonstrates that:

- (1) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and
- (2) The IHA has made diligent efforts to use or obtain other available resources to fund or provide such services; and
- (e) The employment of service coordinators.

§ 950.984 IHA role in activities under this part.

An IHA shall develop a process that ensures that RO/RMC representatives and residents are fully informed of, and have an opportunity to comment on, the contents of the application and activities at all stages of the application and grant award process. The IHA shall give full and fair consideration to the comments and concerns of the residents.

§ 950.985 HUD Policy on training, employment, contracting, and subcontracting of Indian housing residents.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, IHAs, their contractors, and subcontractors shall use best efforts, consistent with existing Federal, State, tribal, and local laws and regulations (including Section 7(b) of the Indian Self-Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance.

§ 950.986 Grant set-aside assistance.

HUD may set-aside five percent of any amounts available in each fiscal year (subsequent to the first funding cycle) to supplement grants previously awarded under this program. These supplemental grants would be awarded to IHAs that demonstrate that funds cannot otherwise be obtained and are needed to provide adequate service levels to residents.

§ 950.987 Resident compensation.

Residents employed pursuant to a FIC grant shall be paid at a rate not less than the highest of:

- (a) The minimum wage that would be applicable to the employee under the Fair Labor Standards Act of 1938

(FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident was not exempt under section 13 of the FLSA;

(b) The State, local, or tribal minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

§ 950.988 Administrative requirements.

Each IHA receiving a grant shall submit to the Area ONAP annual progress report describing and evaluating the use of grant amounts received under this program.

Subpart P—Section 5(h) Homeownership Program

§ 950.1001 Purpose.

This part codifies the provisions of the Section 5(h) Homeownership Program for Indian housing, as authorized by sections 5(h) and 6(c)(4)(D) of the United States Housing Act of 1937 (the Act) and administered by the Department of Housing and Urban Development (HUD).

§ 950.1002 Applicability.

(a) *General applicability.* This subpart P applies to low-income housing owned by Indian Housing Authorities (IHAs), subject to Annual Contributions Contracts (ACCs) under the Act. The terms "housing" or "low-income housing," as used in this subpart P, refer to the types of properties described in the preceding sentence, except as indicated by the particular context. In reference to housing properties, "development" means the same as "project" (as defined in the Act). Except where otherwise indicated by the context, "resident" means the same as "tenant," as the latter term is used in the Act, including Mutual Help and Turnkey III homebuyers, as well as rental tenants of low-income housing and Section 8 residents, and references to sale, purchase, conveyance, and ownership include the types of interests and transactions that are incident to cooperative ownership.

(b) *Nonretroactivity.* In the case of a Section 5(h) homeownership plan that was approved by HUD before October 21, 1991, no modifications or additional requirements will be imposed, except for reasonable administrative procedures prescribed by HUD. Similarly, in the case of a plan that was approved after October 20, 1991, but before December 12, 1994, no modifications or additional requirements will be imposed, except for such reasonable administrative procedures.

§ 950.1003 General authority for sale.

An IHA may sell all or a portion of a development to eligible residents, as defined under § 950.1008, for purposes of homeownership, according to a homeownership plan approved by HUD under this subpart P. Upon sale in accordance with the HUD-approved homeownership plan, HUD will execute a release of the title restrictions prescribed by the ACC. Because the property will no longer be subject to the ACC after sale, it will cease to be eligible for further HUD funding for operating subsidies or modernization under the Act upon conveyance of title by the IHA. (That does not preclude any other types of post-sale subsidies that may be available, under other Federal, tribal, State, or local programs, such as the possibility of available assistance under Section 8 of the Act, in connection with a plan for cooperative homeownership, if authorized by the Section 8 regulations.)

§ 950.1004 Fundamental criteria for HUD approval.

HUD will approve an IHA's homeownership plan if it meets all three of the following criteria:

(a) *Workability.* The plan shall be practically workable, with sound potential for long-term success. Financial viability, including the capability of purchasers to meet the financial obligations of homeownership, is a critical requirement.

(b) *Legality.* The plan shall be consistent with law, including the requirements of this part and any other applicable Federal, tribal, State, and local statutes and regulations, and existing contracts. Subject to the other two criteria stated in this section, any provision that is not contrary to those legal requirements may be included in the plan, at the discretion of the IHA, whether or not expressly authorized in this subpart P.

(c) *Documentation.* The plan shall be clear and complete enough to serve as a working document for implementation, as well as a basis for HUD review.

§ 950.1005 Resident consultation and involvement.

(a) *Resident input.* In developing a proposed homeownership plan, and in carrying out the plan after HUD approval, the IHA shall consult with residents of the development involved, and with any resident organization that represents them, as necessary and appropriate to provide them with information and a reasonable opportunity to make their views and recommendations known to the IHA. If

the plan contemplates sale of units in an entirely vacant development, the IHA shall consult with the IHA-wide resident organization, if any. While the Act gives the IHA sole legal authority for final decisions, as to whether or not to submit a proposed homeownership plan and the content of such a proposal, the IHA shall give residents and their resident organizations full opportunity for input in the homeownership planning process, and full consideration of their concerns and opinions.

(b) *Resident initiatives.* Where individual residents, a resident management corporation (RMC), or another form of resident organization may wish to initiate discussion of a possible homeownership plan, the IHA shall negotiate with them in good faith. Joint development and submission of the plan by the IHA and RMC, or other resident organization, is encouraged. In addition, participation of an RMC or other resident organization in the implementation of the plan is encouraged. (Approved by the Office of Management and Budget under control number 2577-0201).

§ 950.1006 Property that may be sold.

(a) *Types of property.* Subject to the workability criterion of § 950.1004(a) (including, for example, consideration of common elements and other characteristics of the property), a homeownership plan may provide for sale of one or more dwellings, along with interests in any common elements, comprising all or a portion of one or more housing developments. A plan may provide for conversion of existing housing to homeownership or for homeownership sale of newly-developed housing. (However, for low-income housing units developed as replacement housing for units demolished or disposed of pursuant to subpart M of this part, that subpart requires that the initial occupants be selected solely on the basis of the requirements governing rental occupancy (or Mutual Help occupancy, if applicable), without reference to any additional homeownership eligibility or selection requirements under this subpart P.) Mutual Help or Turnkey III homeownership units may be converted to Section 5(h) homeownership, upon voluntary termination by any existing Mutual Help or Turnkey III homebuyers of their contractual rights and amendment of the ACC, in a form prescribed by HUD.

(b) *Physical condition of property.* The property shall meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8

Housing Assistance Payments Program for Existing Housing, under 24 CFR part 882) and the requirements for elimination of lead-based paint hazards in HUD-associated housing, under subpart C of 24 CFR part 35. When a prospective purchaser with disabilities requests accessible features, the features shall be added in accordance with 24 CFR parts 8 and 9. Further, the property shall be in good repair, with the major components having a remaining useful life that is sufficient to justify a reasonable expectation that homeownership will be affordable by the purchasers. This standard shall be met as a condition for conveyance of a dwelling to an individual purchaser, unless the terms of sale include measures to assure that the work will be completed within a reasonable time after conveyance, not to exceed two years (e.g., as a part of a mortgage financing package that provides the purchaser with a home improvement loan or pursuant to a sound sweat equity arrangement).

§ 950.1007 Methods of sale and ownership.

(a) *Permissible methods.* Any appropriate method of sale and ownership may be used, such as fee simple conveyance of single-family dwellings or conversion of multifamily buildings to resident-owned cooperatives or condominiums.

(b) *Direct or indirect sale.* An IHA may sell dwellings to residents directly or (with respect to multifamily buildings or a group of single-family dwellings) through another entity established and governed by, and solely composed of, residents of the IHA's low-income housing, provided that:

(1) The other entity has the necessary legal capacity and practical capability to carry out its responsibilities under the plan.

(2) The respective rights and obligations of the IHA and the other entity will be specified by a written agreement that includes:

(i) Assurances that the other entity will comply with all provisions of the HUD-approved homeownership plan;

(ii) Assurances that the IHA's conveyance of the property to the other entity will be subject to a title restriction providing that the property may be resold or otherwise transferred only by conveyance of individual dwellings to eligible residents, in accordance with the HUD-approved homeownership plan, or by reconveyance to the IHA, and that the property will not be encumbered by the other entity without the written consent of the IHA;

(iii) Protection against fraud or misuse of funds or other property on the part of the other entity, its employees and agents;

(iv) Assurances that the resale proceeds will be used only for the purposes specified by the HUD-approved homeownership plan;

(v) Limitation of the other entity's administrative and overhead costs, and of any compensation or profit that may be realized by the entity, to amounts that are reasonable in relation to its responsibilities and risks;

(vi) Accountability to the IHA and residents for the recordkeeping, reporting and audit requirements of § 950.1017;

(vii) Assurances that the other entity will administer its responsibilities under the plan in accordance with applicable civil rights statutes and implementing regulations, as described in § 950.115; and

(viii) Adequate legal remedies for the IHA and residents, in the event of the other entity's failure to perform in accordance with the agreement.

§ 950.1008 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) *Applications.* Persons who are interested in purchase shall submit applications for that specific purpose, and those applications shall be handled separately from applications for other IHA programs. For vacant units, applications shall be dated as received by the IHA and, subject to eligibility and preference factors, selection shall be made in the order of receipt.

Application for homeownership shall not affect an applicant's place on any other IHA waiting list.

(b) *Eligibility threshold.* Subject to any additional eligibility and preference standards that are required or permitted under this section, a homeownership plan may provide for the eligibility of residents of low-income housing owned or leased by the seller IHA (including Mutual Help and Turnkey III homebuyers, who may elect to terminate their existing homebuyer agreements in favor of purchase under the Section 5(h) homeownership plan) and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller IHA; provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be

purchased). For residents of other housing who are receiving housing assistance under Section 8, the minimum occupancy requirement may be satisfied in the unit for which the family is receiving Section 8 assistance or the Indian housing unit. If the family is to meet part or all of the minimum occupancy requirement in the Indian housing unit, the Section 8 assistance shall be terminated before the family moves into the Indian housing unit. Indian housing units are ineligible for Section 8 certificate and voucher assistance as long as they remain under the ACC as Indian housing.

(c) *Applicants who do not meet minimum residency requirement for eligibility.* (1) A homeownership plan, at IHA discretion, may also permit eligibility for applicants who do not meet the minimum residency requirement of paragraph (b) of this section (30 days or more, as prescribed by the homeownership plan) at the time of application, provided that their selection is conditioned upon completion of the minimum residency requirement prior to conveyance of title. A plan may thus allow satisfaction of the threshold requirements for eligibility by:

- (i) Existing low-income housing or Section 8 residents with less than the minimum period of residency;
- (ii) Families who are already on the IHA's waiting lists; and
- (iii) Other low-income families who are neither low-income housing nor Section 8 residents at the time of application or selection.

(2) Applicants who are not already low-income housing residents, however, shall also satisfy the requirements for admission to such housing.

(d) *Compliance with lease obligations.* Eligibility shall be limited, however, to residents who have been current in all of their lease obligations (in the case of Mutual Help or Turnkey III homebuyers, obligations under their homebuyer agreements) over a period of not less than six months prior to conveyance of title (or, if so provided by the homeownership plan, such lesser period as has elapsed since the beginning of low-income housing or Section 8 tenure), including, but not limited to, payment of rents (or homebuyer's monthly payments) and other charges and reporting of all income that is pertinent to determination of rents (or homebuyer's monthly payments). At the IHA's discretion, the homeownership plan may allow a resident to remedy under-reporting of income, provided that proper reporting of income would not have resulted in ineligibility for admission to low-income housing or for

Section 8 assistance, by payment of the resulting underpayment for rent (or homebuyer's monthly payments) prior to conveyance of title to the homeownership dwelling, either in a lump sum or in installments over a reasonable period. Alternatively, the plan may permit payment within a reasonable period after conveyance of title, under an agreement secured by a mortgage on the property.

(e) *Affordability standard.* Eligibility shall be further limited to residents who are capable of assuming the financial obligations of homeownership, under minimum income standards for affordability, taking into account the unavailability of operating subsidies and modernization funds after conveyance of the property by the IHA. A homeownership plan may, however, take account of any available subsidy from other sources (e.g., in connection with a plan for cooperative ownership, assistance under Section 8 of the Act, if available and authorized by the Section 8 regulations). Under this affordability standard, an applicant shall meet the following requirements:

(1) On an average monthly estimate, the amount of the applicant's payments for mortgage principal and interest, plus insurance, real estate taxes, utilities, maintenance, and other regularly-recurring homeownership costs (such as condominium, cooperative, or other homeownership association fees) will not exceed the sum of 35 percent of the applicant's adjusted income, as defined in this part.

(2) The applicant can pay any amounts required for closing, such as a downpayment (if any) and closing costs chargeable to the purchaser, in accordance with the homeownership plan.

(f) *Option to restrict eligibility.* A homeownership plan may, at the IHA's discretion, restrict eligibility to one or more residency-based categories (e.g., for occupied units, eligibility may be restricted to the existing residents of the units to be sold; for vacant units, eligibility may be restricted to low-income housing residents only, or to low-income housing residents plus any one or more of the other residency-based categories that may be established under paragraphs (b) and (c) of this section), as may be reasonable in view of the number of units to be offered for sale and the estimated number of eligible applicants in various categories provided that the residency-based preferences mandated by paragraph (g) of this section are observed.

(g) *Residency-based preferences.* For occupied units, a preference shall be given to the existing residents of each of

the dwellings to be sold. For vacant units (including units which are voluntarily vacated), a preference shall be given to residents of other low-income housing units owned or leased by the seller IHA (over any other residency-based categories that may be established by a homeownership plan for Section 8 residents or for nonresident applicants).

(h) *Other eligibility or preference standards.* If consistent with the other provisions of this section, a homeownership plan may include any other standards for eligibility or preference, or both, at the discretion of the IHA, that are not contrary to law. (Approved by the Office of Management and Budget under control number 2577-0201).

§ 950.1009 Counseling, training, and technical assistance.

Appropriate counseling shall be provided to prospective and actual purchasers, as necessary for each stage of implementation of the homeownership plan. Particular attention shall be given to the terms of purchase and financing, along with the other financial and maintenance responsibilities of homeownership. In addition, where applicable, appropriate training and technical assistance shall be provided to any entity (such as an RMC, other resident organization, or a cooperative or condominium entity) that has responsibilities for carrying out the plan.

§ 950.1010 Nonpurchasing residents.

(a) *Nonpurchasing resident's options.* If an existing resident of a dwelling authorized for sale under a homeownership plan is ineligible for purchase, or declines to purchase, the resident shall be given the choice of either relocation to other suitable and affordable housing or continued occupancy of the present dwelling on a rental basis, at a rent no higher than that permitted by the Act. Displacement (permanent, involuntary move), in order to make a dwelling available for sale, is prohibited. In addition to applicable program sanctions, a violation of the displacement prohibition may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation and Real Property Acquisition Act of 1970 and implementing regulations at 49 CFR part 24. Where continued rental occupancy by a nonpurchasing resident is contemplated after conveyance of the property, the homeownership plan shall include provision for any rental subsidy required (e.g., Section 8 assistance, if available and authorized by the Section

8 regulations). As soon as feasible after they can be identified, all nonpurchasing residents shall be given written notice of their options under this section.

(b) *Relocation assistance.* A nonpurchasing resident who chooses to relocate pursuant to this section shall be offered the following relocation assistance:

(1) Advisory services to assure full choices and real opportunities to obtain relocation within a full range of neighborhoods where suitable housing may be found, including timely information, counseling, and explanation of the resident's rights under applicable civil rights statutes and implementing regulations, as specified in § 950.115, and referrals to suitable, safe, sanitary, and affordable housing (at a rent no higher than permitted by the Act), which is of the resident's choice, on a nondiscriminatory basis, in accordance with applicable civil rights statutes and implementing regulations, as specified in § 950.115. This requirement will be met if the applicant is offered the opportunity to relocate to another suitable unit in other low-income housing, under any of the housing assistance programs under Section 8 of the Act, or any other Federal, tribal, State, or local program that is comparable, as to standards of housing quality, admission, and rent, to the programs under the Act, and provides a term of assistance of at least five years; and

(2) Payment for actual, reasonable moving and related expenses.

(c) *Temporary relocation.* A nonpurchasing resident who must relocate temporarily to permit work to be carried out shall be provided suitable, decent, safe, and sanitary housing for the temporary period and reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent and utility costs.

§ 950.1011 Nonroutine maintenance reserve.

(a) *When reserve is required.* A nonroutine maintenance reserve shall be established for all multifamily properties sold under a homeownership plan. For single-family dwellings, such a reserve shall not be required if the availability of the funds needed for nonroutine maintenance is adequately addressed under the affordability standard prescribed by the plan.

(b) *Purpose of reserve.* The purpose of this reserve shall be to provide a source of reserve funds for nonroutine maintenance (including replacement), as necessary to ensure the long-term success of the plan, including protection of the interests of the homeowners and the IHA. The amounts to be set aside, and other terms of this reserve, shall be as necessary and appropriate for the particular homeownership plan, taking into account such factors as prospective needs for nonroutine maintenance, the homeowners' financial resources, and any special factors that may aggravate or mitigate the need for such a reserve.

§ 950.1012 Purchase prices and financing.

(a) *Below-market terms.* To ensure affordability by eligible purchasers, by the standard adopted under § 906.8(e) of this chapter, a homeownership plan may provide for below-market purchase prices or below-market financing, or a combination of the two. Discounted purchase prices may be determined on a unit-by-unit basis, based on the particular purchaser's ability to pay, or may be determined by any other fair and reasonable method (e.g., uniform prices for a group of comparable dwellings, within a range of affordability by a group of potential purchasers).

(b) *Types of financing.* Any type of private or public financing may be used (e.g., conventional, Federal Housing Administration (FHA), Department of Veterans Affairs (VA), Farmers' Home Administration (FmHA), or a tribal, State, or local program). An IHA may finance or assist in financing purchase by any methods it may choose, such as purchase-money mortgages, guarantees of mortgage loans from other lenders, shared equity, or lease-purchase arrangements.

§ 950.1013 Protection against fraud and abuse.

A homeownership plan shall include appropriate protections against any risks of fraud or abuse that are presented by the particular plan, such as collusive purchase for the benefit of nonresidents, extended use of the dwelling by the purchaser as rental property, or collusive sale that would circumvent the resale profit limitation of § 950.1014.

§ 950.1014 Limitation on resale profit.

(a) *General.* If a dwelling is sold to the initial purchaser for less than fair market value, the homeownership plan shall provide for appropriate measures to preclude realization by the initial purchaser of windfall profit on resale. "Windfall profit" means all or a portion of the resale proceeds attributable to the purchase price discount (the fair market

value at date of purchase from the IHA less the below-market purchase price), as determined by one of the methods described in paragraphs (b) through (d) of this section. Subject to that requirement, however, purchasers should be permitted to retain any resale profit attributable to appreciation in value after purchase (or a portion of such profit under a limited or shared equity arrangement), along with any portion of the resale profit that is fairly attributable to improvements made by them after purchase.

(b) *Promissory note method.* Where there is potential for a windfall profit because the dwelling unit is sold to the initial purchaser for less than fair market value, without a commensurate limited or shared equity restriction, the initial purchaser shall execute a promissory note, payable to the IHA, along with a mortgage securing the obligation of the note, on the following terms and conditions:

(1) The principal amount of indebtedness shall be the lesser of:

(i) The purchase price discount, as determined by the definition in paragraph (a) of this section and stated in the note as a dollar amount; or

(ii) The net resale profit, in an amount to be determined upon resale by a formula stated in the note. That formula shall define net resale profit as the amount by which the gross resale price exceeds the sum of:

(A) The discounted purchase price;

(B) Reasonable sale costs charged to the initial purchaser upon resale; and

(C) Any increase in the value of the property that is attributable to improvements paid for or performed by the initial purchaser during tenure as a homeowner.

(2) At the option of the IHA, the note may provide for automatic reduction of the principal amount over a specified period of ownership while the property is used as the purchaser's family residence, resulting in total forgiveness of the indebtedness over a period of not less than five years from the date of conveyance, in annual increments of not more than 20 percent. This does not require an IHA's plan to provide for any such reduction at all, or preclude it from specifying terms that are less generous to the purchaser than those stated in the foregoing sentence.

(3) To preclude collusive resale that would circumvent the intent of this section, the IHA shall (by an appropriate form of title restriction) condition the initial purchaser's right to resell upon approval by the IHA, to be based solely on the IHA's determination that the resale price represents fair market value or a lesser amount that will result in

payment to the IHA, under the note, of the full amount of the purchase price discount (subject to any accrued reduction, if provided for by the homeownership plan pursuant to paragraph (b)(2) of this section). If so determined, the IHA shall be obligated to approve the resale.

(4) The IHA may, in its sole discretion, agree to subordination of the mortgage that secures the promissory note, in favor of an additional lien granted by the purchaser as security for a loan for home improvements or other purposes approved by the IHA.

(c) *Limited equity method.* As a second option, the requirement of this section may be satisfied by an appropriate form of limited equity arrangement, restricting the amount of net resale profit that may be realized by the seller (the initial purchaser and successive purchasers over a period prescribed by the homeownership plan) to the sum of:

(1) The seller's paid-in equity;

(2) The portion of the resale proceeds attributable to any improvements paid for or performed by the seller during homeownership tenure; and

(3) An allowance for a portion of the property's appreciation in value during homeownership tenure, calculated by a fair and reasonable method specified in the homeownership plan (e.g., according to a price index factor or other measure).

(d) *Third option.* The requirements of this section may be satisfied by any other fair and reasonable arrangement that will accomplish the essential purposes stated in paragraph (a) of this section.

(e) *Appraisal.* Determinations of fair market value under this section shall be made on the basis of appraisal within a reasonable time prior to sale, by an independent appraiser to be selected by the IHA.

§ 950.1015 Use of sale proceeds.

(a) *General authority for use.* Sale proceeds may, after provision for sale and administrative costs that are necessary and reasonable for carrying out the homeownership plan, be retained by the IHA and used for housing assistance to low-income families (as such families are defined under the Act). The term "sale proceeds" includes all payments made by purchasers for credit to the purchase price (e.g., earnest money, downpayments, payments out of the proceeds of mortgage loans, and principal and interest payments under purchase-money mortgages), along with any amounts payable upon resale under § 950.1014, and interest earned on all

such receipts. (Residual receipts, as defined in the ACC, shall not be treated as sale proceeds.)

(b) *Permissible uses.* Sale proceeds may be used for any one or more of the following forms of housing assistance for low-income families, at the discretion of the IHA and as stated in the HUD-approved homeownership plan:

(1) In connection with the homeownership plan from which the funds are derived, for purposes that are justified to ensure the success of the plan and to protect the interests of the homeowners, the IHA and any other entity with responsibility for carrying out the plan. Nonexclusive examples include nonroutine maintenance reserves under § 950.1011, a reserve for loans to homeowners to prevent or cure default or for other emergency housing needs; a reserve for any contingent liabilities of the IHA under the homeownership plan (such as IHA guaranty of mortgage loans); and a reserve for IHA repurchase, repair, and resale of homes in the event of defaults.

(2) In connection with another HUD-approved homeownership plan under this part, for assistance to purchasers and for reasonable planning and implementation costs.

(3) In connection with a tribal, State, or local homeownership program for low-income families, as described in the homeownership plan, for assistance to purchasers and for reasonable planning and implementation costs. Under such programs, sales proceeds may be used to construct or acquire additional dwellings for sale to low-income families, or to assist such families in purchasing other dwellings from public or private owners.

(4) In connection with the IHA's other low-income housing that remains under ACC, for any purposes authorized for the use of operating funds under the ACC and applicable provisions of the Act and Federal regulations, as included in the HUD-approved operating budgets. Examples include maintenance and modernization, augmentation of operating reserves, protective services, and resident services. Such use shall not result in the reduction of the operating subsidy otherwise payable to the IHA for its other low-income housing.

(5) In connection with any other type of Federal, tribal, State, or local housing program for low-income families, as described in the homeownership plan.

§ 950.1016 Replacement housing.

(a) *Replacement requirement.* As a condition for transfer of ownership under a HUD-approved homeownership plan, the IHA shall obtain a funding

commitment, from HUD or another source, for the replacement of each of the dwellings to be sold under the plan. Replacement housing may be provided by one or any combination of the following methods:

(1) Development by the IHA of additional low-income housing under this part (by new construction or acquisition).

(2) Rehabilitation of vacant low-income housing owned by the IHA.

(3) Use of five-year, tenant-based certificate or voucher assistance under Section 8 of the Act.

(4) If the homeownership plan is submitted by the IHA for sale to residents through an RMC, resident organization, or cooperative association that is otherwise eligible to participate under this subpart, acquisition of non-publicly-owned housing units, that the RMC, resident organization, or cooperative association will operate as rental housing, comparable to IHA-owned low-income housing as to term of assistance, housing standards, eligibility, and contribution to rent.

(5) Any other Federal, tribal, State, or local housing program that is comparable, as to housing standards, eligibility, and contribution to rent, to the programs referred to in paragraphs (a)(1) through (a)(3) of this section, and provides a term of assistance of not less than five years.

(b) *Funding commitments.* Although a HUD funding commitment is required if the replacement housing requirement is to be satisfied through any of the HUD programs listed in paragraph (a) of this section, HUD's approval of a Section 5(h) homeownership plan on the expectation that such a funding commitment will be forthcoming shall not constitute a binding obligation to make such a commitment. Where the requirement is to be satisfied under a tribal, State, or local program, or a Federal program not administered by HUD, a funding commitment shall be required from the proper authority.

(c) *Use of sale proceeds to fund replacement housing.* Sale proceeds that are generated under the homeownership plan may be used under some of the replacement housing options under paragraph (a) of this section (e.g., rehabilitation of vacant public housing units, or an eligible local program). Where a homeownership plan provides for sale proceeds to be used for replacement housing, HUD approval of the plan and execution of the IHA-HUD implementing agreement shall satisfy the funding commitment requirement of paragraph (a) of this section, with regard to the amount of replacement housing to be funded out of sale proceeds.

(d) *Consistency with current housing needs.* Replacement housing may differ from the dwellings sold under the homeownership plan, as to unit sizes or family or elderly occupancy, if the IHA determines that such change is consistent with current local housing needs for low-income families.

(e) *Inapplicability to prior plans.* This section shall not apply to homeownership plans that were submitted to HUD under the Section 5(h) Homeownership Program prior to October 1, 1990.

§ 950.1017 Records, reports, and audits.

The IHA shall be responsible for the maintenance of records (including sale and financial records) for all activities incident to implementation of the homeownership plan. Until all planned sales of individual dwellings have been completed, the IHA shall submit to HUD annual sales reports, in a form prescribed by HUD. The receipt, retention, and expenditure of the sale proceeds shall be covered in the regular independent audits of the IHA's housing operations, and any supplementary audits that HUD may find necessary for monitoring. Where another entity is responsible for sale of individual units, pursuant to § 950.1007(b), the IHA shall ensure that the entity's responsibilities include proper recordkeeping and accountability to the IHA, sufficient to enable the IHA to monitor compliance with the approved homeownership plan, to prepare its reports to HUD, and to meet its audit responsibilities. All books and records shall be subject to inspection and audit by HUD and the General Accounting Office (GAO). (Approved by the Office of Management and Budget under control number 2577-0201).

§ 950.1018 Submission and review of homeownership plan.

Whether to develop and submit a proposed homeownership plan is a matter within the discretion of each IHA. An IHA may initiate a proposal at any time, according to the following procedures:

(a) *Preliminary consultation with HUD staff.* Before submission of a proposed plan, the IHA shall consult informally with the appropriate HUD Area ONAP to assess feasibility and the particulars to be addressed by the plan.

(b) *Submission to HUD.* The IHA shall submit the proposed plan, together with supporting documentation, in a format prescribed by HUD, to the appropriate HUD Area ONAP.

(c) *Conditional approval.* Conditional approval may be given, at HUD discretion, when HUD determines that

to be justified. For example, conditional HUD approval might be a necessary precondition for the IHA to obtain the funding commitments required to satisfy the requirements for final HUD approval of a complete homeownership plan. Where conditional approval is granted, HUD will specify the conditions in writing. (Approved by the Office of Management and Budget under control number 2577-0201)

§ 950.1019 HUD approval and IHA-HUD implementing agreement.

Upon HUD notification to the IHA that the homeownership plan is approvable (in final form that satisfies all applicable requirements of this part), the IHA and HUD will execute a written implementing agreement, in a form prescribed by HUD, to evidence HUD approval and authorization for implementation. The plan itself, as approved by HUD, shall be incorporated in the implementing agreement. Any of the items of supporting documentation may also be incorporated, if agreeable to the IHA and HUD. The IHA shall be obligated to carry out the approved homeownership plan and other provisions of the implementing agreement without modification, except with written approval by HUD.

(Approved by the Office of Management and Budget under control number 2577-0201).

§ 950.1020 Content of homeownership plan.

The homeownership plan shall address the following matters, as applicable to the particular factual situation:

(a) *Property description.* A description of the property, including identification of the development and the specific dwellings to be sold.

(b) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation required under § 950.1006, based on the assessment of the physical condition of the property that is included in the supporting documentation.

(c) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 950.1008.

(d) *Sale and financing.* Terms and conditions of sale and financing (see particularly §§ 950.1011 through 950.1014).

(e) *Future consultation with residents.* A plan for consultation with residents during the implementation stage (See § 950.1005). If appropriate, this may be combined with the plan for counseling

(f) *Counseling.* Counseling, training, and technical assistance to be provided in accordance with § 950.1009.

(g) *Sale via other entity.* If the plan contemplates sale to residents via an entity other than the IHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 950.1007 have been met or will be met in a timely fashion.

(h) *Nonpurchasing residents.* If applicable, a plan for nonpurchasing residents, in accordance with § 950.1010.

(i) *Sale proceeds.* An estimate of the sale proceeds and an explanation of how they will be used, in accordance with § 950.1015.

(j) *Replacement housing.* A replacement housing plan, in accordance with § 950.1016.

(k) *Administration.* An administrative plan, including estimated staffing requirements.

(l) *Recordkeeping, accounting and reporting.* A description of the recordkeeping, accounting, and reporting procedures to be used, including those required by § 950.1017.

(m) *Budget.* A budget estimate, showing the costs of implementing the plan, and the sources of the funds that will be used.

(n) *Timetable.* An estimated timetable for the major steps required to carry out the plan.

(Approved by the Office of Management and Budget under control number 2577-0201).

§ 950.1021 Supporting documentation.

The following supporting documentation shall be submitted to HUD with the proposed homeownership plan, as appropriate for the particular plan:

(a) *Estimate of value.* An estimate of the fair market value of the property, including the range of fair market values of individual dwellings, with information to support the reasonableness of the estimate. (The purpose of this information is merely to assist HUD in determining whether, taking into consideration the estimated fair market value of the property, the plan adequately addresses any risks of fraud and abuse, pursuant to § 950.1013, and windfall profit on resale, pursuant to § 950.1014. A formal appraisal need not be submitted with the proposed homeownership plan.)

(b) *Physical assessment.* An assessment of the physical condition of the property, based on the standards specified in § 950.1006.

(c) *Workability.* A statement demonstrating the practical workability of the plan, based on analysis of data on such elements as purchase prices, costs

of repair or rehabilitation, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who are expected to be interested in purchase. (See § 950.1004(a).)

(d) *IHA commitment and capability.* Information to substantiate the commitment and capability of the IHA and any other entity with substantial responsibilities for implementing the plan.

(e) *Resident planning input.* A description of resident consultation activities carried out pursuant to § 950.1005 before submission of the plan, with a summary of the views and recommendations of residents and copies of any written comments that may have been submitted to the IHA by individual residents and resident organizations, and any other individuals and organizations.

(f) *Nondiscrimination certification.* The IHA's certification that it will administer the plan on a nondiscriminatory basis, in accordance with applicable civil rights laws and implementing regulations, as described in § 950.115, and will assure compliance with those requirements by any other entity that may assume substantial responsibilities for implementing the plan.

(g) *Legal opinion.* An opinion by legal counsel to the IHA, stating that counsel has reviewed the plan and finds it consistent with all applicable requirements of Federal, tribal, State, and local law, including regulations as well as statutes. In addition, counsel shall identify the major legal requirements that remain to be met in implementing the plan, if approved by HUD as submitted, indicating an opinion about whether those requirements can be met without special problems that may disrupt the timetable or other features contained in the plan.

(h) *Board resolution.* A resolution by the IHA's Board of Commissioners, evidencing its approval of the plan.

(i) *Other information.* Any other information that may reasonably be required for HUD review of the plan. Except for the IHA-HUD implementing agreement under § 950.1019, HUD approval is not required for documents to be prepared and used by the IHA in implementing the plan (such as contracts, applications, deeds, mortgages, promissory notes, and cooperative or condominium documents), if their essential terms and conditions are described in the plan. Consequently, those documents need not be submitted as part of the plan or the supporting documentation.

(Approved by the Office of Management

and Budget under control number 2577-0201).

Subpart Q—[Reserved]

Subpart R—Family Self-Sufficiency

§ 950.3001 Purpose, scope, and applicability.

(a) *Purpose.* The purpose of the Family Self-Sufficiency (FSS) program is to develop local strategies to coordinate the use of public and Indian housing assistance and housing assistance under the section 8 rental certificate and rental voucher programs with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

(b) *Applicability.* This subpart applies to Indian housing authorities (IHA) that elect to operate a local FSS program, and when such an election is made, to Indian housing assisted under the United States Housing Act of 1937, and developed or operated by an IHA in an Indian area, as defined in § 950.102. This subpart does not apply to the Mutual Help Homeownership Program or the Turnkey III Program. IHAs that elect to participate in the FSS program are not subject to minimum program size requirements. Additionally, IHAs that received Indian housing units under the FSS incentive award competitions are not subject to the minimum program size requirements.

§ 950.3002 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance, on section 8, public, or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies. The FSS program provides low-income families opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency, as this term is defined in § 950.3003. HUD will measure the success of a local FSS program not only by the number of families who achieve self-sufficiency, but also by the number of FSS families who, as a result of participation in the program, have family members who obtain their first job, or who obtain higher paying jobs; no longer need benefits received under one or more welfare programs; obtain a high school diploma or higher education degree; or accomplish similar goals that will assist

the family in obtaining economic independence.

§ 950.3003 Definitions.

As used in this subpart R:

Certification means a written assertion based on supporting evidence, provided by the FSS family or the IHA, as may be required under this subpart R, and that:

(1) Shall be maintained by the IHA in the case of the family's certification, or by HUD in the case of the IHA's certification;

(2) Shall be made available for inspection by HUD, the IHA, and the public, as appropriate; and

(3) Shall be deemed to be accurate for purposes of this subpart R, unless the Secretary or the IHA, as applicable, determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Contract of participation means a contract in a form approved by HUD, entered into between a participating family and an IHA operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The contract of participation includes all individual training and services plans, attached to the contract as exhibits, entered into between the IHA and all members of the family who will participate in the FSS program. For additional details, see § 950.3022.

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. (See § 950.102.) Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by an IHA on behalf of a participating family.

Effective date of contract of participation means the first day of the month following the month in which the FSS family and the IHA entered into the contract of participation.

Eligible families mean current residents of Indian housing.

Enrollment means the date that the FSS family entered into the contract of participation with the IHA.

Family Self-Sufficiency program or FSS program means the program established by an IHA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by section 23 of the United States Housing Act of 1937 (42 U.S.C. 1437u).

FSS account means the FSS escrow account authorized by section 23 of the Act, and as provided by § 950.3025.

FSS credit means the amount credited by the IHA to the participating family's FSS account.

FSS family or participating family means a family that resides in Indian housing, that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation.

FSS related service program means any program, publicly or privately sponsored, that offers the kinds of supportive services described in the definition of "supportive services" set forth in this section.

FSS slots means the total number of Indian housing units that comprise the minimum size of an IHA's Indian housing FSS program.

Head of FSS family means the adult member of the FSS family who is the head of the household for purposes of determining income eligibility and rent.

Housing subsidies means assistance to meet the costs and expenses of temporary shelter, rental housing, or homeownership, including rent, mortgage, or utility payments.

Individual training and services plan means:

(1) A written plan that is prepared for the head of the FSS family, and each adult member of the FSS family who elects to participate in the FSS program, by the IHA in consultation with the family member, and that sets forth:

- (i) The supportive services to be provided to the family member;
- (ii) The activities to be completed by that family member; and
- (iii) The agreed upon completion dates for the services and activities.

(2) Each individual training and services plan shall be signed by the IHA and the participating family member, and is attached to and incorporated as part of the contract of participation. An individual training and services plan shall be prepared for the head of the FSS family.

JOBS Program means the Job Opportunities and Basic Skills Training Program authorized under part F, title IV of the Social Security Act (42 U.S.C. 402(a)(19)).

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Program Coordinating Committee or *PCC* means the committee described in § 950.3012.

Secretary means the Secretary of Housing and Urban Development.

Self-sufficiency means that an FSS family is no longer receiving section 8, public, or Indian housing assistance, or any Federal, State, or local rent or

homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds. (See § 950.3025).

Supportive services means those appropriate services that an IHA will make available, or cause to be made available, to an FSS family under a contract of participation, and may include:

(1) *Child care*—child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;

(2) *Transportation*—transportation necessary to enable participating family members to receive available services, or to commute to their places of employment;

(3) *Education*—remedial education; education for completion of secondary or post secondary schooling;

(4) *Employment*—job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;

(5) *Personal welfare*—substance/alcohol abuse treatment and counseling;

(6) *Household skills and management*—training in homemaking and parenting skills; household management; and money management;

(7) *Counseling*—counseling in the areas of:

- (i) The responsibilities of homeownership;
- (ii) Opportunities available for affordable rental and homeownership in the private housing market; and
- (iii) Money management; and

(8) *Other services*—any other services and resources, including case management, reasonable accommodations for individuals with disabilities, that the IHA may determine to be appropriate in assisting FSS families to achieve economic independence and self-sufficiency.

Unit size or size of unit refers to the number of bedrooms in a dwelling unit.

§ 950.3004 Basic requirements of the FSS program.

(a) *Compliance with program regulations.* An FSS program established under this subpart shall be operated in conformity with the regulations of this part.

(b) *Compliance with Action Plan.* An FSS program established under this subpart shall be operated in compliance with an Action Plan, as described in § 950.3011, and provide comprehensive supportive services as defined in § 950.3003.

(c) *Compliance with equal opportunity requirements.* An FSS program established under this subpart shall be operated in compliance with all applicable Indian housing regulations and all applicable civil rights authorities, including: the Indian Civil Rights Act of 1968 (25 U.S.C. 1301–1303); title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); Executive Order 11063 (3 CFR, 1959–1963 Comp., p. 652), as amended by Executive Order 12259 (3 CFR, 1980 Comp., p. 307); section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)(b)); section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); and the regulations implementing these authorities. (The Indian Civil Rights Act applies to IHAs organized pursuant to tribal laws; and Title VI of the Civil Rights Act of 1964 and the Fair Housing Act applies to State authorized IHAs.)

§ 950.3011 Action Plan.

(a) *General.* To participate in the FSS program, an IHA shall have a HUD-approved Action Plan that complies with the requirements of this section.

(b) *Development of Action Plan.* The Action Plan shall be developed by the IHA in consultation with the chief executive officer of the applicable unit of general local government, and the Program Coordinating Committee.

(c) *Initial submission and revisions.* (1) *Initial submission.* Unless the dates set forth in this paragraph are extended by HUD for good cause, an IHA that is establishing its first FSS program shall submit an Action Plan to HUD for approval within 90 days of notification by HUD of approval of the IHA's first application for new housing units.

(2) *Revision.* Following initial approval of the Action Plan by HUD, no further approval of the Action Plan is required unless the IHA proposes to make policy changes to the Action Plan, or HUD requires changes. Any changes to the Action Plan shall be submitted to and approved by HUD.

(d) *Contents of Plan.* The Action Plan shall describe the policies and procedures of the IHA for operation of a local FSS program, and shall contain, at a minimum, the following information:

(1) *Family demographics*—a description of the number, size, characteristics, and other demographics (including racial and ethnic data), and the supportive service needs of the

families expected to participate in the FSS program;

(2) *Estimate of participating families*—an estimate of the number of eligible FSS families who can reasonably be expected to receive supportive services under the FSS program, based on available and anticipated Federal, tribal, State, local, and private resources;

(3) *Eligible families from other self-sufficiency programs*—if applicable, the number of eligible families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any other local self-sufficiency program who are expected to agree to execute an FSS contract of participation;

(4) *FSS family selection procedures*—a statement indicating the procedures to be utilized to select families for participation in the FSS program, subject to the requirements governing the selection of FSS families, set forth in § 950.3013.

(5) *Incentives to encourage participation*—a description of the incentives that the IHA's intends to offer eligible families to encourage their participation in the FSS program (incentives plan). The incentives plan shall provide for the establishment of the FSS account in accordance with the requirements set forth in § 950.3025, and other incentives, if any, designed by the IHA. The incentives plan shall be part of the Action Plan.

(6) *Outreach efforts*—a description of:

(i) The IHA's efforts, including notification and outreach efforts, to recruit FSS participants from among eligible families; and

(ii) The IHA's actions to be taken to assure that both minority and nonminority groups are informed about the FSS program, and how the IHA will make this information known (e.g., through door-to-door flyers, posters in any common rooms, advertisements in newspapers of general circulation, as well as any media targeted to minority groups).

(7) *FSS activities and supportive services*—a description of the activities and supportive services to be provided by both public and private resources to FSS families, and identification of the public and private resources that are expected to provide the supportive services.

(8) *Method for identification of family support needs*—a description of how the FSS program will identify the needs and deliver the services and activities according to the needs of the FSS families;

(9) *Program termination, withholding of services, and grievance procedures*—a description of the IHA's policies

concerning: termination of participation in the FSS program, withholding of supportive services on the basis of a family's failure to comply with the requirements of the contract of participation, and the grievance and hearing procedures available to FSS families.

(10) *Assurances of noninterference with rights of nonparticipating families*—an assurance that a family's election not to participate in the FSS program will not affect the family's admission to Indian housing or the family's right to occupancy in accordance with its lease.

(11) *Timetable for program implementation*—a timetable for implementation of the FSS program, as provided in § 950.3020(a)(1), including the schedule for filling FSS slots with eligible FSS families, as provided in § 950.3013;

(12) *Certification of coordination*—a certification that development of the services and activities under the FSS program has been coordinated with the JOBS Program; the programs provided under the JTPA; and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and

(13) *Optional additional information*—such other information that would help HUD determine the soundness of the IHA's proposed FSS program.

(e) *Eligibility of a combined program.* An IHA that wishes to operate a joint FSS program with other IHAs may combine its resources with one or more IHAs to deliver supportive services under a joint Action Plan that will provide for the establishment and operation of a combined FSS program that meets the requirements of this subpart.

(f) *Single action plan.* IHAs implementing both a section 8 FSS program and an Indian housing FSS program may submit one Action Plan.

§ 950.3012 Program Coordinating Committee (PCC).

(a) *General.* Each participating IHA shall establish a PCC whose functions will be to assist the IHA in securing commitments of public and private resources for the operation of the FSS program within the IHA's jurisdiction, including assistance in developing the Action Plan and in implementing the program.

(b) *Membership.* (1) The PCC may consist of representatives of the IHA and of residents of Indian housing.

(2) *Recommended membership.* Membership on the PCC also may include representatives of the unit of general local government served by the IHA, local agencies (if any) responsible for carrying out JOBS training programs or programs under the JTPA, and other organizations, such as other State, local, or tribal welfare and employment agencies, public and private education or training institutions, child care providers, nonprofit service providers, private business, and any other public and private service providers with resources to assist the FSS program.

(c) *Alternative committee.* The IHA may, in consultation with the chief executive officer of the unit of general local government served by the IHA, utilize an existing entity as the PCC if the membership of the existing entity consists or will consist of the individuals identified in paragraph (b)(1) of this section, and also includes individuals from the same or similar organizations identified in paragraph (b)(2) of this section.

§ 950.3013 FSS family selection procedures.

(a) *Preference in the FSS selection process.* An IHA has the option of giving a selection preference for up to 50 percent of its FSS slots to eligible families, as defined in § 950.3003, who have one or more family members currently enrolled in an FSS related service program or on the waiting list for such a program. The IHA may limit the selection preference given to participants in and applicants for FSS-related service programs to one or more eligible FSS-related service programs. An IHA that chooses to exercise the selection preference option shall include the following information in its Action Plan:

(1) The percentage of FSS slots, not to exceed 50 percent of the total number of FSS slots, for which it will give a selection preference;

(2) The FSS related service programs to which it will give a selection preference to the programs' participants and applicants; and

(3) The method of outreach to, and selection of, families with one or more members participating in the identified programs.

(b) *FSS selection without preference.* For those FSS slots for which the IHA chooses not to exercise the selection preference provided in paragraph (a) of this section, the FSS slots shall be filled with eligible families in accordance with an objective selection system, such

as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the IHA shall be described in the IHA's Action Plan.

(c) *Motivation as a selection factor.* (1) *General.* An IHA may screen families for interest and motivation to participate in the FSS program, provided that the factors utilized by the IHA are those which solely measure the family's interest and motivation to participate in the FSS program.

(2) *Permissible motivational screening factors.* Permitted motivational factors include requiring attendance at FSS orientation sessions or preselection interviews, and assigning certain tasks that indicate the family's willingness to undertake the obligations that may be imposed by the FSS contract of participation (e.g., contacting job training or educational program referrals). However, any tasks assigned shall be those that may be readily accomplishable by the family, based on the family members' educational level and disabilities, if any. Reasonable accommodations shall be made for individuals with mobility, manual, sensory, speech impairments, mental, or developmental disabilities.

(3) *Prohibited motivational screening factors.* Prohibited motivational screening factors include the family's educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors that may result in discriminatory practices or treatment toward individuals with disabilities or minority or nonminority groups.

§ 950.3014 On-site facilities.

Each IHA may, subject to the approval of HUD, make available and utilize common areas or unoccupied units in Indian housing projects to provide supportive services under an FSS program.

§ 950.3020 Program implementation.

(a) *Program implementation deadline.* (1) *Program start-up.* Full delivery of the supportive services to be provided to the total number of families required to be served under the program need not occur within 12 months, but shall occur by the deadline set forth in paragraph (a)(2) of this section.

(2) *Full enrollment and delivery of services.* Except as provided in paragraph (a)(3) of this section, the IHA shall have completed enrollment of the

total number of families to be served under the FSS program and shall have begun delivery of the supportive services within two years from the date of notification of approval of the application for new Indian housing units.

(3) *Extension of program deadlines for good cause.* HUD may extend the deadline set forth in either paragraph (a)(1) or paragraph (a)(2) of this section if the IHA requests an extension, and the HUD Area ONAP determines that, despite best efforts on the part of the IHA, the development of new Indian housing units will not occur within the deadlines set forth in this paragraph (a), the commitment by public or private resources to deliver supportive services has been withdrawn, the delivery of such services has been delayed, or other local circumstances that the HUD Area ONAP determines warrants an extension of the deadlines set forth in paragraph (a) of this section.

(b) *Program administration.* An IHA may employ appropriate staff, including a service coordinator or program coordinator, to administer its FSS program, and may contract with an appropriate organization to establish and administer the FSS program, including the FSS account, as provided by § 950.3025.

§ 950.3021 Administrative fees.

The performance funding system (PFS), provided under section 9(a) of the Act, shall provide for the inclusion of reasonable and administrative costs incurred by IHAs in carrying out the local FSS programs. These costs are subject to appropriations by the Congress.

§ 950.3022 Contract of participation.

(a) *General.* Each family that is selected to participate in an FSS program shall enter into a contract of participation with the IHA that operates the FSS program in which the family will participate. The contract of participation shall be signed by the head of the FSS family.

(b) *Form and content of contract.* (1) *General.* The contract of participation, which incorporates the individual training and services plan, shall be in the form prescribed by HUD, and shall set forth the principal terms and conditions governing participation in the FSS program, including the rights and responsibilities of the FSS family and of the IHA, the services to be provided to, and the activities to be completed by, the head of the FSS family, and each adult member of the family who elects to participate in the program.

(2) *Interim goals.* The individual training and services plan, incorporated in the contract of participation, shall establish specific interim and final goals by which the IHA and the family may measure the family's progress toward fulfilling its obligations under the contract of participation, and becoming self-sufficient. For each participating FSS family that is a recipient of welfare assistance, the IHA shall establish as an interim goal that the family become independent from welfare assistance and remain independent from welfare assistance for at least one year before expiration of the term of the contract of participation, including any extension thereof.

(3) *Compliance with lease terms.* The contract of participation shall provide that one of the obligations of the FSS family is to comply with the terms and conditions of the Indian housing lease.

(4) *Employment obligation.* (i) *Head of family's obligation.* The head of the FSS family shall be required under the contract of participation to seek and maintain suitable employment during the term of the contract and any extension thereof. Although other members of the FSS family may seek and maintain employment during the term of the contract, only the head of the FSS family is required to seek and maintain suitable employment.

(ii) *Seek employment.* The obligation to seek employment means that the head of the FSS family has applied for employment, attended job interviews, and has otherwise followed through on employment opportunities.

(iii) *Determination of suitable employment.* A determination of suitable employment shall be made by the IHA based on the skills, education, and job training of the individual that has been designated the head of the FSS family, and based on the available job opportunities within the jurisdiction served by the IHA.

(5) *Consequences of noncompliance with contract.* The contract of participation shall specify that if the FSS family fails to comply with the terms and conditions of the contract of participation, the IHA may:

(i) Withhold the supportive services; or

(ii) Terminate the family's participation in the FSS program.

(c) *Contract term.* The contract of participation shall provide that each FSS family will be required to fulfill those obligations to which the participating family has committed itself under the contract of participation no later than 5 years after the effective date of the contract.

(d) *Contract extension.* The IHA shall, in writing, extend the term of the contract of participation for a period not to exceed two years for any FSS family that requests, in writing, an extension of the contract, provided that the IHA finds that good cause exists for granting the extension. The family's written request for an extension shall include a description of the need for the extension. As used in this paragraph (d) of this section, "good cause" means circumstances beyond the control of the FSS family, as determined by the IHA, such as a serious illness or involuntary loss of employment. Extension of the contract of participation will entitle the FSS family to continue to have amounts credited to the family's FSS account in accordance with § 950.3025.

(e) *Unavailability of supportive services.* (1) *Good faith effort to replace unavailable services.* If a social service agency fails to deliver the supportive services pledged under an FSS family member's individual training and services plan, the IHA shall make a good faith effort to obtain these services from another agency.

(2) *Assessment of necessity of services.* If the IHA is unable to obtain the services from another agency, the IHA shall reassess the family members' needs, and determine whether other available services would achieve the same purpose. If other available services would not achieve the same purpose, the IHA shall determine whether the unavailable services are integral to the FSS family's advancement or progress toward self-sufficiency. If the unavailable services are:

(i) Determined not to be integral to the FSS family's advancement toward self-sufficiency, the IHA shall revise the individual training and services plan to delete these services, and modify the contract of participation to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this section; or

(ii) Determined to be integral to the FSS family's advancement toward self-sufficiency (which may be the case if the affected family member is the head of the FSS family), the IHA shall declare the contract of participation null and void.

(f) *Modification.* The IHA and the FSS family may mutually agree to modify the contract of participation. The contract of participation may be modified in writing with respect to the individual training and services plan, the contract term in accordance with paragraph (d) of this section, and designation of the head of the family.

(g) *Completion of the contract.* The contract of participation is considered to be completed, and a family's participation in the FSS program is considered to be concluded, when one of the following occurs:

(1) The FSS family has fulfilled all of its obligations under the contract of participation on or before the expiration of the contract term, including any extension thereof; or

(2) Thirty (30) percent of the monthly adjusted income of the FSS family equals or exceeds the published existing housing fair market rent for the size of the unit for which the FSS family qualifies based on the IHA's occupancy standards. The contract of participation will be considered completed and the family's participation in the FSS program concluded on this basis even though the contract term, including any extension thereof, has not expired, and the family members who have individual training and services plans, have not completed all the activities set forth in their plans.

(h) *Termination of the contract.* The contract of participation may be terminated before the expiration of the contract term, and any extension thereof, by:

(1) Mutual consent of the parties;

(2) The failure of the FSS family to meet its obligations under the contract of participation without good cause;

(3) The family's withdrawal from the FSS program;

(4) Such other act as is deemed inconsistent with the purpose of the FSS program; or

(5) By operation of law.

(i) *Transitional supportive service assistance.* An IHA may continue to offer to a former FSS family who has completed its contract of participation and whose head of the family is employed, appropriate FSS supportive services in becoming self-sufficient (if the family still resides in Indian housing), or in remaining self-sufficient (if the family no longer resides in Indian or other assisted housing).

§ 950.3024 Total tenant payment and increases in family income.

(a) *Calculation of total tenant payment.* Total tenant payment for a family participating in the FSS program is determined in accordance with the regulations set forth in §§ 950.315 through 950.325.

(b) *Increases in FSS family income.* Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or a resource for purposes of eligibility of the FSS family for other benefits, or amount of benefits payable

to the FSS family, under any other program administered by HUD, unless the income of the FSS family equals or exceeds 80 percent of the median income of the area (as determined by HUD, with adjustments for smaller and larger families).

§ 950.3025 FSS account.

(a) *Establishment of FSS account.* (1) *General.* The IHA shall deposit the FSS account funds of all families participating in the IHA's FSS program into a single depository account. The IHA shall deposit the FSS account funds in one or more of the HUD-approved investments.

(2) *Accounting for FSS account funds.*

(i) *Accounting records.* The total of the FSS account funds will be supported in the IHA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the IHA shall credit monthly, to each family's FSS account, the amount of the FSS credit determined in accordance with paragraph (b) of this section.

(ii) *Proration of investment income.* The investment income for funds in the FSS account will be prorated and credited to each family's FSS account based on the balance in each family's FSS account at the end of the period for which the investment income is credited.

(iii) *Reduction of amounts due by FSS family.* If the FSS family has not paid the family contribution towards rent, or other amounts, if any, due under the Indian housing lease, the balance in the family's FSS account shall be reduced by that amount before prorating the interest income. If the FSS family has fraudulently under-reported income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

(3) *Reporting on FSS account.* Each IHA will be required to make a report, at least once annually, to each FSS family on the status of the family's FSS account. At a minimum, the report will include:

(i) The balance at the beginning of the reporting period;

(ii) The amount of the family's rent payment that was credited to the FSS account, during the reporting period;

(iii) Any deductions made from the account for amounts due the IHA before interest is distributed;

(iv) The amount of interest earned on the account during the year; and

(v) The total in the account at the end of the reporting period.

(b) *FSS credit.* (1) *Computation of amount.* For purposes of determining the FSS credit, "family rent" means the

total tenant payment as defined in this part 950. The FSS credit shall be computed as follows:

(i) For FSS families that are very low-income families, the FSS credit shall be the amount that is the lesser of:

(A) Thirty (30) percent of the family's current monthly adjusted income less the family rent, which is obtained by disregarding any increase in earned income (as defined in § 950.3003) from the effective date of the contract of participation; or

(B) The current family rent less the family rent at the time of the effective date of the contract of participation.

(ii) For FSS families that are low-income families but not very low-income families, the FSS credit shall be the amount determined according to paragraph (b)(1)(i) of this section, but that shall not exceed the amount computed for 50 percent of median income.

(2) *Ineligibility for FSS credit.* FSS families that are not low-income families shall not be entitled to any FSS credit.

(3) *Cessation of FSS credit.* The IHA shall not make any additional credits to the FSS family's FSS account when the FSS family has completed the contract of participation, as defined in § 950.3022(g), or when the contract of participation is terminated or otherwise nullified.

(c) *Disbursement of FSS account funds.* (1) *General.* The amount in an FSS account, in excess of any amount owed to the IHA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family when the contract of participation has been completed as provided in § 950.3022(g), and if at the time of contract completion, the head of FSS family submits to the IHA a certification, as defined in § 950.3003, that, to the best of his or her knowledge and belief, no member of the FSS family is a recipient of welfare assistance.

(2) *Disbursement before expiration of contract term.* (i) If the IHA determines that the FSS family has fulfilled its obligations under the contract of

participation before the expiration of the contract term, and the head of the FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS account, in excess of any amount owed to the IHA by the FSS family as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family.

(ii) If the IHA determines that the FSS family has fulfilled certain interim goals established in the contract of participation and needs a portion of the FSS account funds for purposes consistent with the contract of participation, such as completion of higher education (i.e., college, graduate school), or job training, or to meet start-up expenses involved in creation of a small business, the IHA may, at the IHA's sole option, disburse a portion of the funds from the family's FSS account to assist the family to meet those expenses.

(3) *Verification of family certification.* Before disbursement of the FSS account funds to the family, the IHA may verify that the FSS family is no longer a recipient of welfare assistance by requesting copies of any documents that may indicate whether the family is receiving any welfare assistance, and contacting welfare agencies.

(d) *Succession to FSS account.* If the head of the FSS family ceases to reside with other family members in the Indian housing unit, the remaining members of the FSS family, after consultation with the IHA, shall have the right to designate another family member to receive the funds in accordance with paragraph (d) (1) or (2) of this section.

(e) *Use of FSS account funds for homeownership.* An FSS family may use its FSS account funds for the purchase of a home, including the purchase of a home under one of HUD's homeownership programs, or other Federal, State, or local homeownership programs, unless such use is prohibited by the statute or regulations governing the particular homeownership program.

(f) *Forfeiture of FSS account funds.* (1) *Conditions for forfeiture.* Amounts in the FSS account shall be forfeited upon the occurrence of the following:

(i) The contract of participation is terminated, as provided in §§ 950.3022(e) or 950.3022(h); or

(ii) The contract of participation is completed by the family, as provided in § 950.3022(g), but the FSS family is receiving welfare assistance at the time of expiration of the term of the contract of participation, including any extension thereof.

(2) *Treatment of forfeited FSS account funds.* FSS account funds forfeited by the FSS family will be credited to the IHA's operating reserves and counted as other income in the calculation of the FSS operating subsidy eligibility for the next budget year.

§ 950.3030 Reporting.

Each IHA that carries out an FSS program under this subpart shall submit to HUD, in the form prescribed by HUD, a report regarding its FSS program. The report shall include the following information:

(a) A description of the activities carried out under the program;

(b) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;

(c) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and

(d) Any recommendations by the IHA or the appropriate local program coordinating committee for legislative or administrative action that would improve the FSS program and ensure the effectiveness of the program.

Dated: March 30, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

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