

has not been conveyed at the time the CIAP application or CGP Annual Submission is submitted, is eligible for any physical improvement under § 968.112(d).

(2) *Conveyed units.* Where modernization work has been approved before conveyance, the PHA 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. A PHA shall not use funds provided under this part for the purpose of modernizing units if the modernization work was not approved before conveyance of title.

(c) *Other.* The homebuyer family must be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for non-emergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements, (e.g., accessibility for persons with disabilities and lead-based paint activities) and the correction of development deficiencies. Notwithstanding the above requirement, a PHA may, with prior HUD approval, complete non-emergency physical improvements on any homeownership unit where the PHA 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.

[59 FR 44837, Aug. 30, 1994, as amended at 61 FR 8737, Mar. 5, 1996; 62 FR 27126, May 16, 1997; 64 FR 50229, Sept. 15, 1999]

§ 968.103 Allocation of funds under section 14.

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

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 950 of this title, an amount not to exceed \$75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to PHAs and IHAs

for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY. Any unused funds from previous years may remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies and the procedures by which a PHA may request such funds, are set forth in § 968.104.

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

(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 is designed to measure the relative backlog and accrual needs of PHAs and IHAs.¹

(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 PHAs and IHAs, as follows:

(1) *Determination of backlog need:*

(i) *Statistically reliable data are available.* Where HUD determines that the

¹In construing all terms used in the statutory indicators for estimating backlog and accrual need, HUD shall use the meanings cited in Appendix B of the HUD Report to the Congress on Alternative Methods for Funding Public Housing Modernization (April 1990). Copies of the HUD Report to Congress may be obtained by contacting the HUD User at 1-800-245-2691.

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

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

(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 PHA or IHA, 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 PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction 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);

(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 paragraph (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 public housing stock as of 1991.

(3) Replacement factor to reflect backlog need for developments with demolition, disposition, or conversion occurring on or after October 1, 1996. (i) PHAs that have a reduction in units attributable to demolition, disposition, or conversion of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the Comprehensive Grant formula calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (e)(3)(ii) of this section. The factor will be added, where applicable, for the first 5 years after such reduction, and consists of 50 percent of the published Total Development Cost for a two-bedroom unit in a walkup type structure for the period April 3, 1996 through April 30, 1997, multiplied times the number of units to be demolished, disposed of, or converted. The total relative backlog need of the PHA resulting from application of this replacement factor cannot exceed the share it would have had if the demolition, disposition, or conversion had not taken place.

(ii) A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(A) The PHA requests the application of the replacement factor;

(B) The restored funding that results from the use of the replacement factor is used to provide replacement housing (in any year in which replacement housing is an eligible activity) or accelerated renovation of vacant but viable units, in accordance with the PHA's five-year action plan, approved by HUD (see § 968.315);

(C) The PHA does not receive funding under the public housing development; Major Reconstruction of Obsolete Public Housing, or HOPE VI programs for the units developed or modernized with funds received under this replacement housing factor;

(D) A PHA that has been determined by HUD to be troubled or mod-troubled that is not already under the direction of HUD or a court-appointed receiver, in accordance with part 901 of this chapter, must use an Alternative Management Entity as defined in § 901.5 of this chapter for development of replacement housing and must comply with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(E) Any development of replacement housing by any PHA must be done in accordance with part 941 of this chapter.

(iii) If the PHA does not use the restored funding that results from the use of the replacement factor to provide replacement housing or renovate vacant units in a timely fashion, in accordance with § 968.125 and § 941.501 of this chapter, and make reasonable progress on such use of the funding, in accordance with § 968.335(a)(3) and § 941.501, HUD may require appropriate corrective action under § 968.335 and § 941.501; may recapture and reallocate the funds; or may use other remedies available to HUD.

(4) *Deduction for prior modernization:* HUD shall deduct from the estimated backlog need, as determined under either paragraph (e)(1)(i) or (e)(1)(ii) of this section, amounts previously provided to a PHA or IHA 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 a PHA-wide or IHA-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 fifty percent deduction of a PHA's or IHA'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 a PHA with a DOFA date of October 1, 1991 or thereafter will be considered by HUD to have a zero backlog.

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

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

(ii) Items that must be added to developments to meet HUD's modernization standards under § 968.115, and State and local 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 PHAs and IHAs, determined as follows:

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

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

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

(ii) Objectively measurable data concerning the following PHA or IHA, 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 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 PHA or IHA that owns or operates 250 or more units. (weighted at .0144);

(iii) An equation constant of 602.1.

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

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

(ii) Items that must be added to developments to meet HUD's modernization standards under § 968.115, and State and local codes.

(4) *Replacement factor to reflect accrual need for developments with demolition, disposition, or conversion occurring on or after October 1, 1996.* (i) PHAs that have a reduction in units attributable to demolition, disposition, or conversion of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the Comprehensive Grant formula calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (f)(4)(ii) of this section. The factor will be added, where applicable, for the first five years after such reduction, and consists of two percent of the published Total Development Cost for a two-bedroom unit in a walkup type structure for the period April 3, 1996 through April 30, 1997, multiplied times the number of units to be demolished, disposed of, or converted. The total rel-

ative accrual need of the PHA resulting from application of this replacement factor cannot exceed the share it would have had if the demolition, disposition, or conversion had not taken place.

(ii) A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(A) The PHA requests the application of the replacement factor;

(B) The restored funding that results from the use of the replacement factor is used to provide replacement housing (in any year in which replacement housing is an eligible activity) or accelerated renovation of vacant but viable units, in accordance with the PHA's five-year action plan, approved by HUD (see § 968.315);

(C) The PHA does not receive funding under the public housing development, Major Reconstruction of Obsolete Public Housing, or HOPE VI programs for the units developed or modernized with funding received under this replacement housing factor;

(D) A PHA that has been determined by HUD to be troubled or mod-troubled, in accordance with part 901 of this chapter that is not already under the direction of HUD or a court-appointed receiver, must use an Alternative Management Entity as defined in § 901.5 of this chapter for development of replacement housing and must comply with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(E) Any development of replacement housing by any PHA must be done in accordance with part 941 of this chapter.

(iii) If the PHA does not use the restored funding that results from the use of the replacement factor to provide replacement housing or renovate vacant units in a timely fashion, in accordance with § 968.125 and § 941.501 of this chapter, and make reasonable progress on such use of the funding, in accordance with § 968.335(a)(3) and § 941.501, HUD may require appropriate corrective action under § 968.335 and § 941.501; may recapture and reallocate the funds; or may use other remedies available to HUD.

(g) *Allocation of CIAP.* The formula amount determined under paragraphs (e) and (f) of this section for PHAs and

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

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

(i) *Use of formula allocation.* Any amounts allocated to a PHA under paragraphs (e) and (f) of this section may be used for any eligible activity under this part, 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 PHAs and IHAs.

(j) *Calculation of number of units.* For purposes of determining under this section the number of units owned or operated by a PHA or IHA, and the relative modernization needs of PHAs and IHAs, HUD shall count as one unit each existing rental 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. In addition, HUD shall count as one unit each existing unit under the Mutual Help program. New development units that are added to an PHA's or IHA'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, including the substantial rehabilitation of a Mutual Help or Turnkey III unit, HUD shall not adjust the amount the PHA or IHA 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 PHA or IHA 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 formula funding purposes for the current year, 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 which are lost as a result of demolition, disposition or conversion shall not be offset against units subsequently added to a PHA's or IHA'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 PHA or IHA 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 which 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 a PHA's or IHA'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 a PHA's or IHA's units, will also be phased in over a three-year period, as described in paragraph (k)(2) of this section.

[57 FR 5571, Feb. 14, 1992, as amended at 59 FR 30477, June 13, 1994; 59 FR 44837, Aug. 30, 1994; 61 FR 8737, Mar. 5, 1996; 63 FR 46107, Aug. 28, 1998]

§ 968.104 Reserve for emergencies and disasters.

(a) *Emergencies—(1) Eligibility for assistance.* A PHA (including a PHA that has been designated as mod troubled under PHMAP) may obtain funds at any time, for any eligible emergency work item as defined in § 968.305 (for CGP PHAs) or for any eligible emergency work item (described as emergency modernization in § 968.205) (for CIAP PHAs), from the reserve established under § 968.103(b). However, emergency reserve funds may not be provided to a CGP PHA that has the necessary funds available from any other source, including its annual formula allocation under § 968.103 (e) and (f), other unobligated modernization funds, and its replacement reserves. A

PHA is not required to have an approved comprehensive plan under § 968.315 before it can request emergency assistance from this reserve. Emergency reserve funds may not be provided to a CIAP PHA 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, a PHA must submit a request, in a form to be prescribed by HUD, which demonstrates that without the requested funds from the set-aside, the PHA does not have adequate funds available to correct the conditions which 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 PHA's request meets the requirements under paragraph (a)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve;

(3) *Repayment.* A CGP PHA that receives assistance for its emergency needs from the reserve under § 968.103(b) must repay such assistance from its future allocations of assistance, where available. For CGP PHAs, HUD shall deduct up to 50 percent of a PHA's succeeding year's formula allocation under § 968.103 (e) and (f) to repay emergency funds previously provided by HUD to the PHA. The remaining balance, if any, shall be deducted from a PHA's succeeding years' formula allocations. A CIAP PHA is not required to repay assistance for its emergency needs from the reserve.

(b) *Natural and other disasters—(1) Eligibility for assistance.* A PHA (including a PHA that has been designated as mod troubled under PHMAP) may request assistance at any time from the reserve established under § 968.103(b) for the purpose of permitting the PHA to address a natural or other disaster. To qualify for assistance, the disaster must pertain to an extraordinary event affecting only one or a few PHAs, such as an earthquake or hurricane. Any disaster declared by the President (or which HUD determines would qualify for a Presidential declaration if it were