

(v) Contradiction of local government certification or PHA resolution.

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the PHA, until such time as the PHA submits, and HUD approves, an amendment to its plan. The PHA is expected to undertake the work set forth in the Annual Statement. However, the PHA 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 PHA annual Performance and Evaluation Report for each grant. See § 968.330. The PHA is encouraged to inform the residents of significant changes (such as changes in scope of work or whenever it moves items within the approved Five-Year Action Plan). Documentation of that information shall be retained in PHA files. If HUD determines as a result of an audit or monitoring findings that a PHA 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 § 968.335. 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.

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

(a) *General.* The Annual Submission is a collective term for all documents which the PHA must submit to HUD for review and approval before access-

ing 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, PHA Board Resolution, materials demonstrating the partnership process and any other documents as prescribed by HUD. For planning purposes, a PHA may use either the amount of funding received in the current year or the actual formula amount provided in HUD's notification under § 968.310(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 PHA-wide which the PHA intends to undertake in each year of years two through five. In preparing these Work Statements, the PHA shall assume that the current FFY formula amount will be available in each year of years two through five, as discussed in § 968.315(d)(5)(i). The Work Statements for all five years will be at the same level of detail so that the PHA may interchange work items. A PHA may budget up to 8% of its annual grant in a contingency account for cost overruns.

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

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

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

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

(2) If the PHA 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

PHA has not submitted all required material, HUD will promptly notify the PHA 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 must be received by HUD.

(d) *Resident and local government participation.* A PHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in § 968.315 (b) and (c), in consultation with officials of the appropriate governing body (or, in the case of a PHA 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 councils 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 PHA shall annually provide public notice of the advance meeting and the public hearing in a manner determined by the PHA and which ensures notice to all duly elected resident councils;

(2) *Advance Meeting with residents.* The PHA shall at least annually hold a meeting open to all residents and duly elected resident councils. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this section. The PHA will provide residents with information concerning the contents of the PHA's Five-Year Action Plan (and any proposed amendments to the PHA'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 PHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to present information on the Annual Submission and the sta-

tus 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 PHA 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.* PHAs are encouraged to hold the meeting with residents and duly elected resident councils 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 a PHA elects to use such expedited scheduling, it must explain at the meeting with residents and duly elected resident councils 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 must 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 must include, for each development or on a PHA-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 PHA-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 memorandum of agreement or management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds (see § 968.125);

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

(6) Any documentation that HUD needs to assist it in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 968.110(c) and (d);

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

(8) A PHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 968.315(e)(7).

(f) *Additional submissions with Annual Submission.* A PHA shall submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 968.315(f), 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 § 968.320(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 PHA in writing, post-marked 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 must 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 the

Department 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 where:

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

(ii) *Contradiction of PHA resolution.* HUD has evidence which tends to challenge, in a substantial manner, the certifications contained in the board resolution, as required by § 968.315(e)(7).

(h) *Amendments to Annual Statement.* The PHA shall advise HUD of all changes to the PHA's approved Annual Statement in its Performance and Evaluation Report submitted under § 968.330. The PHA shall submit to HUD for prior approval any additional work categories (except for emergency work) which are not within the PHA's approved Five-Year Action Plan.

(i) *Failure to obligate formula funds and extension of time for performance—(1) Failure to obligate formula funds.* If the PHA fails to obligate formula funds within the approved or extended time period, the PHA 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 § 968.335 and the PHA failed to comply with the order. HUD could then require an alternative management strategy in a corrective action order. A PHA 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 a PHA's appeal within 30 calendar days of the date of its receipt of the PHA's appeal.

(2) *Extension of time for performance.* A PHA may extend the target dates for fund obligation and expenditure in the approved Annual Statement whenever any delay outside the PHA's control occurs, as specified by HUD, and the extension is made in a timely manner. Such revision is subject to HUD review under § 968.345(a)(2) as to the PHA's

continuing capacity. HUD shall not review as to a PHA's continuing capacity any revisions to a PHA's Comprehensive Plan and related statements where 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 PHA shall enter into an ACC amendment in order for the PHA to draw down modernization funds. The ACC amendment shall require low-income use of 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 PHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

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#### § 968.330 PHA performance and evaluation report.

For any FFY in which a PHA has received assistance under this subpart, the PHA 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 PHA 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.

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#### § 968.335 HUD review of PHA performance.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of the performance of each PHA 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 PHA has carried out its activities under this subpart in a timely manner and in accordance with its comprehensive plan.

(2) *Continuing capacity.* HUD will determine whether the PHA 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 where the PHA has not yet had comparable experience under the CGP.

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

(i) Conformity with its comprehensive plan, including its annual statement and latest HUD-approved five-year action plan, and other statutory and regulatory requirements;

(ii) Continuing capacity to carry out its comprehensive plan in a timely manner and expend the annual grant funds; and

(iii) Reasonable progress toward bringing all of its developments to the modernization and energy conservation standards and toward implementing the work specified in the annual statement or five-year action plan designed to address management deficiencies.

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

(c) *Corrective action order.* (1) Based on HUD reviews of PHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the PHA a corrective action