

## § 968.110

resident who is displaced by rehabilitation or demolition, the term *initiation of negotiations* means 45 calendar days before (1) the issuance of the invitation for bids for the project or (2) the start of force account work, whichever is applicable.

(Approved by the Office of Management and Budget under OMB Control Number 2506-0121)

[58 FR 13931, Mar. 15, 1993, as amended at 61 FR 8738, Mar. 5, 1996]

### § 968.110 Other program requirements.

In addition to the Federal requirements set forth in 24 CFR part 5, the PHA shall comply with the following program requirements:

(a) *Nondiscrimination and equal opportunity.* The PHA shall comply with Title II of the Americans with Disabilities Act and 28 CFR part 35; section 504 of the Rehabilitation Act of 1973 and 41 CFR part 60-471; and the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and 24 CFR part 40.

(b) [Reserved]

(c) *Environmental clearance.* Before approving a proposed project, HUD will comply with the requirements of 24 CFR part 50, implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4332 et seq.) and related requirements of 24 CFR 50.4.

(d) *Flood insurance.* HUD will not approve for acquisition, construction, or improvement, a building located in an area that has been identified by the Federal Emergency Management Agency 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. 4001 et seq.); and

(2) The community in which the area is situated is participating in the National Flood Insurance Program in accord with 44 CFR parts 59-79, or less than one year has passed since FEMA notification regarding flood hazards.

(e) *Wage rates.* (1) *Davis-Bacon.* With respect to modernization work or contracts over \$2,000 (except for nonroutine maintenance work), all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by the PHA or its contractors shall be paid not less

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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-276a-5).

(2) *HUD-determined.* With respect to all nonroutine maintenance work or contracts, all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as determined or adopted by HUD pursuant to section 12 of the United States Housing Act of 1937.

(3) *State.* Prevailing wage rates determined under State law are inapplicable under the circumstances set forth in § 965.101 of this chapter.

(f) *Technical wage rates.* All architects, technical engineers, draftsmen and technicians (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the development of a project shall be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by HUD.

(g)-(j) [Reserved]

(k) *Lead-based paint poisoning prevention.* The PHA shall comply with the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, L, and R of this title.

(l) [Reserved]

(m) *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.

[54 FR 52689, Dec. 21, 1989, as amended at 56 FR 922, Jan. 9, 1991; 56 FR 15175, Apr. 15, 1991; 57 FR 5573, Feb. 14, 1992; 57 FR 14761, Apr. 22, 1992; 58 FR 13932, Mar. 15, 1993; 61 FR 5216, Feb. 9, 1996; 61 FR 8738, Mar. 5, 1996; 64 FR 33637, June 23, 1999; 64 FR 50229, Sept. 15, 1999]

### § 968.112 Eligible costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Before a PHA may be approved for substantial rehabilitation of a unit

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

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

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

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

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

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

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

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

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

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

(4) To the extent that its annual formula allocation and any unobligated balances of modernization funds are not adequate to meet emergency needs, a PHA must first use its replacement reserve, where funded, to meet emergency needs, before requesting funds from the reserve under § 968.104. Use of the replacement reserve is not required for emergencies if the amount that otherwise would be used from that reserve is an accumulation from application of the replacement housing factor (§ 968.103(e) (3) and (f)(4)) that is necessary so that replacement housing can be provided efficiently and effectively.

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

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

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

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

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

the modernization program under this part, and to contract with resident-owned businesses for modernization work.

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

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

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

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

(i) *Lead-based paint costs.* Eligible costs include lead-based paint activities, such as insurance coverage and cleanup and disposal, in accordance with part 35 of this title.

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

(1) *Salaries.* The salaries of non-technical and technical PHA personnel assigned full-time or part-time to modernization are eligible costs only where the scope and volume of the work are beyond that which could be reasonably

expected to be accomplished by such personnel in the performance of their non-modernization duties. A PHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (e.g., to the CIAP, CGP or operating budget);

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

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

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

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

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

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

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

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

(ii) *Planning costs.* Planning costs are costs incurred *before* HUD approval of

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

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

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

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

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

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

- (1) Luxury improvements;
- (2) Indirect administrative costs (overhead), as defined in OMB Circular A-87;
- (3) Public housing operating assistance;

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

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

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

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

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

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

[61 FR 8738, Mar. 5, 1996, as amended at 62 FR 27126, May 16, 1997; 63 FR 46108, Aug. 28, 1998; 64 FR 50229, Sept. 15, 1999]

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

All improvements funded under this part shall:

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

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

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

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

[61 FR 8740, Mar. 5, 1996]

#### §968.120 Force account.

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