

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 manage-

ment 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.

(Approved by the Office of Management and Budget under control number 2577-0157)

[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44841, Aug. 30, 1994. Redesignated and amended at 61 FR 8748, Mar. 5, 1996]

§ 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

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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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[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44843, Aug. 30, 1994. Redesignated and amended at 61 FR 8748, Mar. 5, 1996]

§ 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 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 PHA of the specific program requirements which the PHA has violated, and specifying that any of the corrective actions listed in paragraph (e) of this section must 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 PHA 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 a PHA in accordance with this section, the PHA's Board of Commissioners must notify affected residents of HUD's determination, the bases for the determination, the conditioning requirements imposed under this paragraph, and the consequences to the PHA if it fails to comply with HUD's requirements.

(d) *Basis for corrective action.* HUD may order a PHA to take corrective action only if HUD determines:

(1) The PHA has not submitted a performance and evaluation report, in accordance with § 968.330;

(2) The PHA has not carried out its activities under the CGP program in a timely manner and in accordance with