

§ 941.404 Completion of development.

(a) When all development has been completed and paid for, but not later than 12 months after the end of the initial operating period unless a longer period is approved by HUD, the PHA shall submit a statement of the actual development cost. For this purpose, the initial operating period with respect to each project is the period commencing with the date of initiation of the project and ending with the earliest of the following three dates: the end of the calendar quarter in which ninety-five percent of the dwelling units in the project are occupied; the end of the calendar quarter that is six, seven, or eight months after the date of full availability of the project; or the end of the calendar quarter next preceding the date of physical completion of the project.

(b) HUD shall review the statement and establish the actual development cost of the project, which becomes the maximum total development cost for purposes of the ACC.

EFFECTIVE DATE NOTE: At 61 FR 38021, July 22, 1996, § 941.404 was revised. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart E—Performance Review**§ 941.501 HUD review of PHA performance; sanctions.**

(a) *HUD determination.* 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 (a), taking into consideration all available evidence.

(1) *Conformity with PHA proposal.* HUD shall determine whether the PHA has carried out its activities under this subpart in a timely manner and in accordance with its approved proposal.

(i) In making this determination, HUD shall review the PHA's performance under previous inspections, audit findings and other sources to determine whether the development activities undertaken during the period under review conform substantially to the activities specified in the approved PHA proposal. HUD also shall review a

PHA's development schedule to determine whether the PHA has carried out its development activities in a timely manner;

(ii) HUD shall review a PHA's performance to determine whether the activities carried out comply with the requirements of the Act, and other applicable laws and regulations.

(2) *Continuing capacity.* HUD shall determine whether the PHA has a continuing capacity to carry out its development plan in a timely manner. The primary factors to be considered in arriving at a determination that a PHA has a continuing capacity are those described in paragraph (a)(1) of this section ("conformity with PHA proposal"). HUD shall give particular attention to PHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

(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 that the PHA has violated and requesting the PHA to take any of the actions specified 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 been issued previously with respect 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 that 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 shall 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 (ACC);

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

(1) The PHA has not carried out its activities under the development program in a timely manner and in accordance with its approved proposal, or HUD requirements, as determined in paragraph (a)(1) of this section;

(2) The PHA does not have a continuing capacity to carry out its proposal in a timely manner or in accordance with its proposal or HUD requirements, as determined in paragraph (a)(2) of this section;

(3) The PHA has failed to repay HUD for amounts awarded under the development programs that were improperly expended;

(e) *Types of corrective action.* HUD may direct a PHA to take one or more of the following corrective actions:

(1) Submit additional information:

(i) Concerning the PHA's administrative, planning, budgeting, accounting, management, and evaluation functions to determine the cause for a PHA not meeting the standards in paragraphs (a)(1) or (a)(2) of this section;

(ii) Explaining any steps the PHA is taking to correct the deficiencies;

(iii) Documenting that PHA activities were not inconsistent with the PHA's proposal or other applicable laws, regulations or program requirements; and

(iv) Demonstrating that the PHA has a continuing capacity to carry out the proposal in a timely manner;

(2) Submit schedules for completing the work identified in its proposal and report periodically on its progress in meeting the schedules;

(3) Notwithstanding 24 CFR 941.205(c), 24 CFR 941.402(a) and 24 CFR 85.36(g), submit to HUD documents for prior approval, which may include, but are not limited to:

(i) Complete design, construction and bid documents (prior to soliciting bids);

(ii) Complete rehabilitation drawings/specifications or work write-ups;

(iii) Development budgets, including modifications;

(iv) Proposed award of contracts, including construction contracts, turn-key contracts of sale, letters of commitment, and contracts with the architect/engineer (prior to execution);

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the PHA proposal, or periodic performance report;

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

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

(f) *Failure to take corrective action.* In cases where HUD has ordered corrective action and the PHA 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) Terminate future draw downs and/or advances to the PHA. In such case, the amount of advances made to the PHA shall be repaid by the PHA from any funds or assets available for that purpose;

(2) Require alternative management of development functions by an entity other than the PHA;

(3) Cancel the fund reservation if the PHA fails to start (begin construction or rehabilitation), or complete (acquisition) within 30 months from the date of the fund reservation pursuant to section 5(k) of the Act;

(4) Recapture for good cause any grant amounts previously provided to a PHA, based upon a determination that the PHA has failed to comply with the requirements of the development program.

(g) *Right to appeal.* Before taking any of the actions described in paragraph (f) of this section, HUD shall notify the PHA and give it an opportunity, within a prescribed period of time, to present any arguments or additional facts and data concerning the proposed action.

[61 FR 38021, July 22, 1996]