based on solely on doubt as to liability, and to reject offers in compromise, limited to penalties, regardless of the amount of the liability sought to be compromised, and to summarily reject without further investigation, offers based solely on doubt as to liability regardless of the amount of the liability sought to be compromised, limited to obvious offers that are frivolous, groundless or dilatory, or where the liability has been finally determined by the Tax Court or other courts, or by a Commissioner's final closing agreement, or where the offer is based upon an agreed liability in which administrative appeal rights has been exercised or waived. This authority may be redelegated only to the Chief, Compliance Division (Service Centers) and Chief Collection Division (Austin Compliance Center).

4. To the extent that the authority previously exercised consistent with this Order may require ratification, it is hereby approved and ratified. Delegation Order No. 11 (Rev. 21), effective October 1, 1991, is superseded.

Dated: January 30, 1992.

Approved:

David G. Blattner,

Chief Operations Officer.

[FR Doc. 92–3549 Filed 2–13–92; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 31
Friday, February 14, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a business meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Monday, March 2, 1992.

The Commission was established pursuant to Public Law 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the North Smithfield Public Library, 20 Main Street, N. Smithfield, RI for the following reasons:

1. To Review and Approve Demonstration Projects.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone: (508) 278-9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

James Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 92-3746 Filed 2-12-92; 2:16 pm]

BILLING CODE 4310-70-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10 a.m., February 19, 1992.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion Open to the public:

1. Docket No. 91-32—*Passenger Vessel Financial Responsibility Requirements for Indemnification of Passengers for Nonperformance of Transportation*—Consideration of Comments.

2. Delegated Authority—Issuance of Section 3, Public Law 89-777, Certificates of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation.

Portion Closed to the public:

Docket No. 89-07—*Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trades*—Fact Finding Report.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92-3702 Filed 2-12-92; 9:58 am]

BILLING CODE 6730-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-03]

Emergency Notice

TIME AND DATE: February 20, 1992 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Petition and complaint—
   Certain single in-line memory modules and products containing the same (Docket Number 1699)
5. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: February 12, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-3745 Filed 2-12-92; 2:15 pm]

BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 57, No. 31
Friday, February 14, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Duty Administrative Review

Correction

In notice document 91-29977, beginning on page 65218, in the issue of Monday, December 16, 1991, make the following correction:

On page 65226, in the third column, after "*Comment 42:*", insert "Shirasuna claims that the department neglected to insert into the program credit expense data for thirteen third-country sales." Also, a new paragraph headed with "*Department's Position:*", should preceed "We Disagree.".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Computer Matching Program; Notice

Correction

In notice document 92-2911 appearing on page 4542 in the issue of Wednesday, February 5, 1992, at the end of the document the date filed should read, "2–4–92".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 63

[CC Docket No. 90-337; FCC 91-401]

Common Carrier Services: In the Matter of Regulation of International Accounting Rates

Correction

In rule document 92-57 beginning on page 646, in the issue of Wednesday, January 8, 1992, make the following correction:

On page 647, in the second column, in the third full paragraph, in the third line, the effective date "February 6, 1992" should read "April 7, 1992".

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7032]

Federal Insurance Administration; Proposed Flood Elevation Determinations

Correction

In proposed rule document 91-29839, appearing on page 65037, in the issue of Friday, December 13, 1991, the headings for the table were printed incorrectly, and the table should read as set forth below:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Texas	Corpus Christi, City Nueces and Kleburg Counties.	Gulf of Mexico	Eastern Mustang Island shoreline southeast of Coyote Island.	*10	*13
			West of Leeward Drive	*8	*9
		Laguna Madre	Wilsons Cut	*8	*9
			Park Road No. 22 approximately 2,200 feet south of Commodores Drive.	*8	*10
		Corpus Christi Bay	Mustang Island western shoreline approximately 9,000 feet south of Coyote island.	*8	*9
			Approximately 3,000 feet northwest of Pelone Island	*8	*10

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91E-0492]

Determination of Regulatory Review Period for Purposes of Patent Extension ; Accupril®

Correction

In notice document 92-2633 beginning on page 4212 in the issue of Tuesday, February 4, 1992, make the following correction:

On page 4213, in the first column, in the third line, "1991" should read "1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB80

Endangered and Threatened Wildlife and Plants; Notice of Intent Concerning Manatee Protection Areas in Lake Woodruff National Wildlife Refuge, Florida

Correction

In proposed rule document 91-2954, beginning on page 4745, in the issue of Friday, February 7, 1992, make the following correction:

On page 4745, in the third column, under **DATES:**, in the third line, "1991." should read "1992.".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30296; File No. SR-PTC-90-02]

Self Regulatory Organizations; Participants Trust Company; Order Approving a Proposed Rule Change Relating to the Formation of a Subsidiary

Correction

In notice document 92-2590, beginning on page 4232, in the issue of Tuesday, February 4, 1992, make the following correction:

On page 4232, in the second column, in the first line, the release no. was printed incorrectly and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8380]

RIN 1545-AP76

Treatment of Partnership Liabilities

Correction

In rule document 91-30596 beginning on page 66348, in the issue of Monday, December 23, 1991, make the following corrections:

1. On page 66350, in the third column, in the table of contents, in § 1.752-2(b)(6), "or" should read "of".

2. On the same page, in the same column, in the table of contents, in § 1.752-2(j)(4), "Examples." should read "Example.".

§ 1.752-2 [Corrected]

3. On page 66352, in the first column, in § 1.752-2(b)(2)(i), in the fifth line, "1.701-1(b)(4)(i)" should read "1.704-1(b)(4)(i)".

4. On the same page, in the second column, in the same section, paragraph designation "(5)" should read "(6)".

5. On the same page, in the same column, in § 1.752-2(d)(2), in the 14th line, after "which" insert "would".

6. On page 66353, in the second column, in § 1.752-2(e)(4), in Example 2., in the third line under the table, "Capital" should read "capital".

7. On the same page, in the same column, in the same section, in Example 3., in the fourth line, after the "F" insert "'".

BILLING CODE 1505-01-D

federal register

Friday,
February 14, 1992

Part II

Department of Housing and Urban Development

Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 968, and 990

Public and Indian Housing Comprehensive Grant Program and Amendments to the Comprehensive Improvement Assistance Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 968, and 990

[Docket No. R-92-1531; FR-2980-F-02]

RIN 2577-AB06

Public and Indian Housing Comprehensive Grant Program and Amendments to the Comprehensive Improvement Assistance Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends 24 CFR parts 905, 968 and 990 to establish the new Comprehensive Grant program for public housing agencies (PHAs) and Indian Housing Authorities (IHAs) that own or operate 500 or more public or Indian housing units. The Comprehensive Grant program, which allocates modernization funds on the basis of a formula, is designed to provide larger housing authorities with greater discretion in the planning and implementation of modernization activities. The rule also revises the existing Comprehensive Improvement Assistance program (CIAP) to limit its applicability to PHAs and IHAs that own or operate fewer than 500 public or Indian housing units.

In addition, the rule also implements: (1) Section 509 of the Cranston-Gonzalez National Affordable Housing Act ("the NAHA"), as amended by the HUD Appropriations Act for FFY 1992, which established the formula process for allocating modernization funds under the Comprehensive Grant program; (2) section 509(e) of the NAHA which, beginning with funding for FFY 1993, reduces the threshold for participation in the Comprehensive Grant program from 500 or more public or Indian housing units to 250 or more units. Also beginning in FFY 1993, the ceiling for participation in the CIAP shall be reduced from fewer than 500 public or Indian housing units, to fewer than 250 units. Because the Department considers section 509(e) to be a self-executing provision, it is implementing this section in this rulemaking for effect in FFY 1993; (3) section 516 of the NAHA which provides for the comprehensive modernization of Mutual Help homeownership units using no more than a single CIAP or CGP grant; (4) amendments to the Indian Housing CIAP under 24 CFR part 905, subpart I; and (5) various technical and conforming amendments contained in the NAHA.

EFFECTIVE DATE: This rule shall be effective on March 16, 1992.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Public and Indian Housing, Department of Housing and Urban Development, room 4122, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1800.

Indian housing authorities may contact Dom Nessi, Director, Office of Indian Housing, Public and Indian Housing, Department of Housing and Urban Development, room 4230, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1015.

Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The Department has submitted this final rule to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The OMB control number, when assigned, will be announced by separate document in the **Federal Register.**

HUD received a number of public comments on the paperwork burden associated with the Comprehensive Grant program. In response to these comments, the Department has made significant changes to the CGP requirements by reducing the number of paperwork submissions and eliminating duplicative paperwork requirements. For a complete summary of the public comments concerning the CGP paperwork burden, and the Department's response to these comments, see Section IV of this preamble.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

II. Background

Section 14 of the U.S. Housing Act of 1937 (42 U.S.C. 14371) ("Act") established the Department's current public housing modernization program: The Comprehensive Improvement Assistance Program (CIAP). The CIAP was designed to improve the physical condition of existing public housing developments, and to upgrade the management and operation of these developments to ensure that the developments continue to be available to serve low income families. The Department promulgated regulations for the CIAP at 24 CFR part 968, and these regulations have governed the modernization of all public housing assisted under the Act.

(The reader should note that, for ease of discussion, the preamble to this final rule uses the terms "public housing" to refer to both public and Indian Housing, and "PHA" or "public housing agency," to refer to both PHAs and IHAs, unless otherwise stated. In addition, the term "development" is used to refer to "low income projects," as defined at section 3(b)(1) of the Act.)

On February 5, 1988, the Housing and Community Development Act of 1987 (Pub. L. 100-242) ("1987 Act") was enacted, and contained a provision which revised significantly the public housing modernization program. Section 119 of the 1987 Act established the new Comprehensive Grant program (CGP) which was designed to govern the modernization needs of PHA's that owned or operated 500 or more public housing units. In addition, section 119 amended the CIAP to limit its applicability only to PHAs that owned or operated fewer than 500 public housing units.

(Beginning with funding for FFY 1993, the statutory threshold for participation in the CGP will be reduced from 500 or more public housing units to 250 or more units. In the CIAP, the ceiling for participation will be reduced from fewer than 500 public housing units to fewer than 250 units.)

The Department published a proposed rule on October 27, 1988 (53 FR 43648) to implement the amendments contained in section 119 of the 1987 Act, and also to propose changes to the CIAP which were intended to simplify and streamline the program. HUD did not, however, publish a final rule to implement most of the amendments contained in the proposed rule because of language contained in section 14(k)(1)

of the Act, which directed HUD to fund public housing modernization "in substantial accordance with the allocation method in effect on the date of enactment of the (1987 Act), "(i.e., to continue funding modernization activities using the CIAP allocation method). The Department was directed to use the CIAP allocation method until such time as Congress established a revised method for allocating modernization assistance under section 14(k)(1).

Accordingly, the Department published a final rule on December 21, 1989 (54 FR 52686) which implemented only those provisions of HUD's October, 1988 proposed rule which pertained to the streamlined CIAP application process, and to the reorganization of part 968 into a subpart A (with generally applicable provisions), and subpart B (containing the revised CIAP provisions). The final rule did not contain any provisions relating to the Comprehensive Grant program, since Congress had not yet enacted a law governing the funds allocation process for that program. Thus, the CIAP remained HUD's sole vehicle for providing modernization funds to PHAs of all sizes.

The Department subsequently incorporated the streamlined CIAP into its consolidated rulemaking for the Indian housing program (see 24 CFR part 905, subpart I, of the interim rule published on June 18, 1990 at 55 FR 24722), and solicited public comment on those provisions. As a result of public comments received on the June, 1990 interim rule, HUD is including in this final rule amendments to the CIAP portion of the Indian Housing Consolidated rule. For a further discussion of these public comments, and the Department's responses to the comments, see Section V of this preamble.

On November 28, 1990, President Bush signed into law the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625) ("the NAHA"). Section 509 of the NAHA established a formula allocation method for the Comprehensive Grant program, which HUD is required to implement following notice and comment rulemaking.

On April 26, 1991, HUD published a proposed rule (see 56 FR 19434) to implement the formula allocation process contained in section 509 of the NAHA, and also to republish with modifications the program requirements that were originally contained in the October, 1988 proposed CGP rule. Accordingly, the public was provided with an additional opportunity to comment on the CGP requirements, and to review it in conjunction with the formula allocation method.

III. Program Objectives

The Comprehensive Grant program has two basic objectives for PHAs that own or operate 500 or more public housing units (250 or more units beginning in FFY 1993): (1) To provide greater discretion to PHAs in carrying out their modernization programs, thereby returning it to local control; and (2) to establish reliable funding for capital improvements through the use of formula funding for the annual accrual of capital improvement needs and for current needs.

Under the program, larger PHAs receive capital improvement funds by a formula allocation method, instead of the current competitive, discretionary CIAP in which HUD decides which developments are to be funded by setting priorities, establishing a ranking system, and reviewing and approving individual applications. The program provides PHAs with much greater discretion in planning and carrying out modernization of their public housing developments.

This final rule: (1) Amends the CIAP at 24 CFR part 968, subpart B, to limit its applicability to PHAs that own or operate fewer than 500 public housing units (fewer than 250 units beginning in FFY 1993); (2) adds a new Subpart C to Part 968, which sets forth the new Comprehensive Grant program for PHAs that own or operate a total of 500 or more public housing units (250 or more units beginning in FFY 1993); and (3) revises both the CIAP and Comprehensive Grant programs for purposes of implementing various technical and substantive program amendments contained in sections 509 (b) through (f) of the NAHA.

In the Indian Housing program, the final rule renames part 905, subpart I, as "Modernization;" and reorganizes subpart I into three undesignated headings: (1) The first heading contains provisions which are generally applicable to both the CIAP and Comprehensive Grant modernization under part 905, subpart I; (2) the second heading contains the streamlined CIAP requirements with amendments reflecting public comments received on the CIAP portions of the June, 1990 Indian Housing Consolidated interim rule, and with modifications which limit the applicability of the CIAP to IHAs that own or operate fewer than 500 Indian housing units (fewer than 250 units beginning in FFY 1993); (3) the third heading adds the new Comprehensive Grant program for IHAs that own or operate 500 or more Indian housing units (250 or more units beginning in FFY 1993); and (4) In addition, the rule revises both the CIAP and Comprehensive Grant programs under subpart I to implement various technical and substantive program amendments contained in sections 509 (b) through (f) of the NAHA, as well as section 516 of the NAHA which provides for the comprehensive modernization of a Mutual Help unit using a single CIAP or CGP grant.

The following schedule specifies the location of comparable provisions for the Indian Housing and Public Housing Modernization programs codified in parts 905 and 968, respectively:

Location in part 968	Section heading	Location in part 905 (subpart I)
Subpart A	*General*	
§ 968.101	Purpose and applicability	§ 905.600.
968.103	Allocation of funds under Section 14	905.601.
968.105	Definitions	905.102
968.110	Other program requirements	905.120
968.112	Special requirements for homeownership developments	905.602.
968.115	Modernization and energy conservation standards	905.603.
968.120	Preemption of State prevailing wage requirements	905.120.
Subpart B	Comprehensive Improvement Assistance Program (for PHAs that own or operate fewer than 500 public housing units)	
§ 968.201	Purpose	§ 905.609.
968.203	Definitions	905.102.
968.205	Eligible costs	905.615.
968.210	Procedures for obtaining approval of a modernization program	905.618.

Location in part 968	Section heading	Location in part 905 (subpart I)
968.215	Modernization project	905.621
968.220	Resident participation	905.624.
968.225	Homebuyer participation	905.627.
968.235	Special requirements for section 23 leased housing bond-financed developments	905.633.
968.236	Additional limitations for special purpose modernization	905.636.
968.240	Contracting requirements	905.639.
968.245	Fund requisitions	905.642.
968.246	Progress reporting	905.645.
968.250	Budget revisions	905.648.
968.251	On-site inspections	905.651.
968.255	Fiscal closeout of a modernization program	905.654.
Subpart C	Comprehensive Grant Program (For PHAs that own or operate 500 or more public housing units)	
§ 968.301	Purpose	§ 905.660.
968.305	Definitions	905.102.
968.310	Eligible costs	905.666.
968.312	Reserve for emergencies and disasters	905.667
968.315	Allocation of assistance [for troubled and non-troubled PHAs]	905.669.
968.320	Comprehensive plan	905.672.
968.325	HUD review and approval of comprehensive plan	905.675.
968.330	Annual statement of activities and expenditures	905.678.
968.335	Conduct of modernization activities	905.681.
968.340	PHA performance and evaluation report	905.684.
968.345	HUD review of PHA performance	905.687.

IV. Public Comments

The Department received 48 comments on its April 26, 1991 proposed rule (56 FR 19434). The commenters included 39 public and Indian housing authorities, three municipalities, two resident organizations, the Council for Large PHAs (CLPHA), the National Association of Housing Redevelopment Officials (NAHRO), the PHA Directors Association (PHADA), and the National Housing Law Project.

Following the publication of the proposed rule, HUD officials met with representatives from CLPHA, NAHRO and PHADA to discuss their comments on the proposed rule. Representatives of resident organizations and IHAs were also invited to the meeting, but were unable to attend. This final rule reflects public comments received during the rulemaking process, many of which were reiterated at HUD's July 18, 1991 meeting with public housing organizations.

Paperwork Burden

Numerous objections were raised by commenters in response to the proposed paperwork requirements in the CGP rule. Many of these commenters indicated that the proposed CGP paperwork requirements reflected a significant increase in the paperwork burden currently being imposed upon larger PHAs and IHAs under the CIAP. Others asserted that HUD's estimate of the "burden hours" and "hours per response" were unrealistic, and argued further that merely consolidating paperwork into "fewer primary documents" would not necessarily result in PHAs spending less time preparing those documents.

Two commenters, a housing authority and a municipality, maintained that HUD had failed to fully recognize the significant departure in modernization management spawned by the Housing Act of 1987 and the NAHA. They asserted that the Department continued to rely on the CIAP model, "* * * with its corresponding over-regulation, federal control, and burdensome paperwork requirements," rather than to envision the broader array of mod activities that a PHA might now pursue.

Another commenter asserted that the proposed level of detail in the comprehensive plan and annual statement exceeded the level authorized by the 1987 Act and, therefore, runs contrary to the Paperwork Reduction Act.

In response to these public comments, the Department has reassessed the CGP submission and reporting requirements and made significant changes. For example, the executive summary has been simplified, and the high needs component has been omitted. In addition, the required level of detail for the physical and management needs assessments and the performance and evaluation report has been reduced significantly. Although the 1987 Act does require an assessment of "each project" of the PHA, the final rule nevertheless permits a more general description of the needed improvements (e.g., bathrooms) at each development. HUD has also made substantial changes in the overall program approach so as to increase the level of discretion accorded to PHAs, while lessening the degree of oversight by HUD.

Although the Department has reduced the level of detail, it acknowledges that the paperwork burden for the submission and reporting requirements in this final rule are greater than the estimates provided in the proposed rule. Specifically, the Department has recognized the intensity of effort that PHAs must undertake to thoroughly assess both physical and management needs, initially, and revised the burden hours accordingly. In the first year of program implementation (i.e., in FY 1992, for PHAs with 500 or more units and, in FY 1993, for PHAs with 250 to 499 units), the burden hours have been revised to reflect the level of effort required to develop the comprehensive plan, inclusive of the resident and local government involvement. In subsequent years, however, the submission and reporting requirements will be greatly reduced from that of the initial year. HUD believes that the revised paperwork burden now accurately reflects the submission and reporting requirements in this final CGP rule.

Another commenter questioned HUD's capacity to implement the new CGP modernization program, as proposed in the April 1991 rulemaking. This commenter asserted that the amount of paperwork to be submitted to HUD for review and approval under the CGP represented a significant increase over the current CIAP submission and reporting requirements, and expressed doubt as to whether HUD staff could respond appropriately to these expanded program requirements. In

addition, HUD was asked to extend the implementation date for the CGP because the Department "appeared to be having some difficulty in developing the PHMAP."

While the Department appreciates these concerns, it believes that it has the capacity to carry out the requirements of the CGP, even more so now that the program requirements have been scaled back significantly. In addition, the implementation of the program has been greatly assisted as a result of joint HUD/NAHRO training conducted for PHAs, residents and HUD staff at various sites around the country during the spring and summer of 1991. HUD believes that although there are always uncertainties at the beginning of any new program, it will be possible to effectively implement the CGP in FY 1992, thereby providing the benefits of predictable formula funding to PHAs at the earliest possible time.

Nevertheless, the Department does concede that additional time is needed before it can implement the mod troubled portion of the PHMAP program. Hence, the Department will designate PHAs as mod troubled under PHMAP in FFY 1993 and will implement the authority under section 509(a)(5)(A) to reduce a PHA's formula allocation under the CGP based upon its designation as a mod troubled agency under PHMAP in that FFY. HUD intends to use such designations for purposes of reducing mod troubled PHAs' formula allocations beginning in FFY 1993. HUD fully intends in each succeeding year to carry out the statutory mandate to reduce a mod troubled PHA's formula allocation under the CGP

Purpose and Applicability (§§ 905.600 and 968.101)

A. General

A commenter urged HUD to adopt as the title of the program the name given to it by NAHA, i.e., "the Public and Indian Housing Modernization program." The commenter stated that such a change was appropriate since annual grants to PHAs will no longer be for the "comprehensive modernization" of any individual development, but will be used flexibly by the PHA according to the modernization strategy it deems best.

HUD has not adopted this comment since, although section 509(g) establishes the "Public and Indian Housing Modernization" as the name of the modernization programs under section 14, there nevertheless remain two separate modernization programs within this umbrella designation. Namely the CIAP under 24 CFR part 968 (Subpart B), and 24 CFR part 905 (Subpart I), for modernization grants to PHAs and IHAs with fewer than 500 public housing units (fewer than 250 units beginning in FY 1993), and the CGP under CFR part 968 (Subpart C), and 24 CFR part 905 (Subpart I), for formula funded grants to PHAs with 500 or more public housing units (more than 250 units beginning in FY 1993). Moreover, HUD notes that the designation, "Comprehensive Grant," has a statutory basis since it derives from the House Committee Report to the 1987 Act (see reference to "[P]ublic Housing Comprehensive Grants" contained in H.R. Rep. No. 122, 100th Cong., 1st Sess 20, 1987).

Further, under the CGP, PHAs will plan comprehensively for all developments in their inventory, although the improvements may be carried out over numerous years. HUD does not intend that the CGP will be operated in the same manner as "comprehensive modernization" under the CIAP. Rather, HUD supports emphatically the statutory mandate under the CGP which requires PHAs to identify the total needs of all developments and, thereafter, to prioritize the use of available funds to meet all or some of those needs over the next one-year period in the annual statement (or up to two years, if so elected by a PHA), and over the next five-year period in the action plan. Under the CGP approach, a PHA may also spend its grant funds at various developments and for various purposes, consistent with the action plan and annual statement. This program approach differs significantly from the CIAP where funds have to be spent for specific mod types, i.e., comprehensive, special purpose, emergency, lead-based paint or homeownership modernization.

One housing authority, however, objected to the difference in program approaches between the CIAP and CGP modernization programs, arguing that the proposed CGP abandons the CIAP's emphasis on "comprehensive" improvements and, when combined with the final PHMAP regulations, sets up PHAs to fail, albeit under the guise of greater PHA discretion and flexibility.

The Department does not believe that this prediction is accurate. The Comprehensive Grant program permits a PHA to totally modernize its developments over a short or long period of time, depending upon the availability of funds and its own competing priorities. HUD notes also that, in response to public comments, it has made significant changes to the PHMAP program, which are reflected in the published PHMAP interim rule. Many of these revisions affect the timeframes in which a PHA must improve performance in failed areas. Accordingly, HUD believes that the CGP, in conjunction with the PHMAP, will provide greater PHA discretion and flexibility over modernization activities, while more effectively and efficiently upgrading the public housing stock.

Three commenters noted that HUD appeared to imply in its April 1991 proposed rule that a new modernization program was limited by statute to larger PHAs. These commenters stated that nothing in the 1987 Act prevented HUD from adopting for PHAs with fewer than 500 units a modernization program or allocation system that is simpler than the CIAP. Furthermore, they contended that Congress intended expressly that the revised modernization program under section 14 would provide to all PHAs (both large and small) greater discretion, local control and flexibility in the planning and implementation of modernization activities. Consequently, these commenters urged HUD to establish simplified procedures for making modernization grants to small PHAs, citing in particular that PHAs with fewer than 250 units should not be required to prepare CPMs at all, while the CPM requirements for PHAs with 250–500 units should be greatly simplified.

Initially, HUD notes that section 119 of the 1987 Act, which established the Comprehensive Grant program, applies expressly to PHAs that own or operate 500 or more units. This is clear from numerous and explicit references throughout the legislative text to the 500-unit threshold for participation in the CGP (see, for example, section 14(e)(1), (e)(3)(A), (e)(4)(A), and (e)(4)(B) of the Act, as added by section 119).

Furthermore, the purpose of section 119 is limited almost exclusively to establishing the Comprehensive Grant program, and to making conforming amendments to the CIAP so as to limit its applicability to PHAs with fewer than 500 units (fewer than 250 units beginning in FY 1993). Hence, when section 119(a) provides that "[I]t is the purpose of the amendments made by this section" to provide "considerable discretion to PHAs to decide the specific improvements, the manner of their execution, and the timing of the expenditure of funds in the modernization of projects," it is referring to the amendments establishing the Comprehensive Grant Program, and not the CIAP.

This interpretation is supported by the fact that section 119(a) states that another statutory purpose of the section

119 amendments is to provide PHAs with "greater control in planning and expending funds" under the Act. This statutory purpose is then implemented expressly in the CGP by section 14(e)(4)(D) of the Act which states that, "[I]n administering this section, the Secretary shall, to the greatest extent possible respect the professional judgment of the administrators of the public housing agency." There is no comparable language in the CIAP, either as a result of section 119 of the 1987 Act, or subsequent enactments (including the NAHA).

Finally, it should be noted that HUD does not have the discretion unilaterally to abolish in the CIAP the statutory requirement for a comprehensive assessment of needs. Section 14(d) of the Act expressly states that:

> Except as provided in subsection (f)(4), no assistance may be made available under subsection (b) to a public housing agency that owns or operates less than 500 units [250 units beginning in FY 1993] unless the Secretary has approved an application from the public housing agency which has been developed in consultation with appropriate local officials and with tenants of the housing projects for which assistance is required. Such application shall contain at least— * * *. [listing of mandatory comprehensive assessment requirements.]

Consequently, HUD may not remove the requirement for a comprehensive assessment of need under the CIAP in the absence of a legislative amendment to section 14. Hence, a PHA receiving modernization funds under the CIAP must submit to HUD a comprehensive assessment (except in the case of emergencies). Nevertheless, there is no legal prohibition to HUD's simplifying (as opposed to eliminating) the comprehensive assessment of need, as well as other facets of the CIAP, and the Department fully intends to propose such modifications in a separate rulemaking.

A couple of commenters criticized HUD for publishing the October, 1988 proposed rule for the Comprehensive Grant program, stating that there had been no Congressional authorization for a "new comprehensive grants program." They maintained that the 1987 Act amended section 14, primarily by adding statutory requirements concerning modernization plans, action strategies and procedural simplifications for PHAs with more than 500 units. Thus, these commenters maintained that the statutory provisions could have been implemented as changes to the CIAP, rather than as authority for an "entirely new" Comprehensive Grant program. Accordingly, they urged HUD to remove from the final CGP rule any reference to a "new program of comprehensive grants" being authorized by the 1987 Act.

The Department has not adopted this comment since it believes that section 119 of the 1987 Act did, indeed, intend to establish a new program of "comprehensive grants" for large PHAs, rather than simply to amend the existing CIAP. This view is supported by the House Committee Report to the 1987 Act (H.R. Rep. No. 122, 100th Cong., 1st Sess. 21 (1987)) which provides under the heading of "Public housing comprehensive grants:"

> The Committee is interested in considering an *alternative system* for providing sufficient funds on a reliable and consistent basis to permit PHAs to develop and implement a comprehensive rehabilitation and maintenance program * * * (Emphasis added).

HUD's view is supported further by express statutory language as well. Section 509 of the NAHA established a 500-unit threshold (to be reduced to 250 units beginning in FY 1993) as the cutoff for PHA participation in the CGP, and provided expressly in section 509(k)(2)(D)(iii)(4) that "the amount determined under the formula for each agency that owns or operates 500 or more units shall be allocated to each qualifying agency in accordance with subsection (e)" [i.e., in accordance with the requirements of the Public Housing Comprehensive Grant program].

Finally, section 509(g) establishes a "transition" provision from the CIAP to the CGP, and states:

> Any amount that the Secretary has obligated to a public housing agency under this section *other than pursuant to the program established under subsection (e)* [i.e., under the Comprehensive Grant program], shall be used for purposes consistent with an action plan submitted by the agency under subsection (e) and approved by the Secretary, as the agency determines to be appropiate. [Emphasis added.]

HUD construes these provisions as evidencing a clear congressional intent to establish an alternative, new program of modernization for larger PHA, to be designated as "Public Housing Comprehensive Grant." Accordingly, the Department has retained without modification its proposed distinction between the CIAP and Comprehensive Grant programs.

A housing authority asserted that early discussions on the CGP considered the notion of fungibility of operating and CGP funds. This commenter urged that a HUD–PHA dialogue be established to discuss the development of a system which would allocate to a PHA both PFS and CGP funds at the beginning of the PHA's fiscal year, and which would permit the PHA to use the combined income to develop its operating and capital budgets.

HUD has not adopted this recommendation since operating subsidy and CGP funding cannot, in the absence of a legislative amendment, be combined into one income source for PHAs because they derive from separate appropriations. Operating subsidy supplements a PHA's income to ensure that its developments are properly maintained and managed. CGP funds, on the other hand, are intended to provide for long-term capital improvements. While a PHA may utilize its operating subsidy (i.e., the extraordinary maintenance account) to fund certain capital improvements, it may not use modernization funds for routine operating expenses.

A number of commenters asserted that, although section 119 of the 1987 Act provided explicit guidance to HUD concerning the purposes of the Act, HUD chose to ignore these statutory objectives when it promulgated its April 1991 proposed rule. As an example, these commenters stated that even though section 119(a) states that HUD is to provide PHAs with greater authority and flexibility in planning and administering their own modernization programs, the Department actually proposed to increase its control over a PHA's modernization activities. These commenters also pointed to section 14(e)(4)(D) of the Act, which requires HUD "* * * to respect, to the greatest extent possible, the professional judgment of a PHA's administrators," and asserted that HUD had actually afforded very little discretion to PHAs under the proposed rule.

As a result of these comments, the Department has reassessed its overall program approach under the proposed CGP rule, and has revamped significantly the requirements contained in this final rule so as to decrease the level of HUD control over PHA modernization activities, while increasing PHA discretion and responsibility. These changes will be discussed throughout this preamble, under the appropriate program components (e.g., needs assessments, action plan, annual statement, viability determinations, program monitoring, etc.).

The New York City Housing Authority (NYCHA) objected to HUD's failure to create finer distinctions among PHAs with more than 500 units. The NYCHA maintained that although HUD recognized its uniquely large size by excluding it from the formula, the

Department had failed to propose abbreviated program submission requirements for very large PHAs, such as the NYCHA. Initially, the Department wants to point out that section 14 of the Act does not differentiate between the types of submissions to be made by PHAs participating in the CGP, irrespective of their size. Nevertheless, HUD believes that the NYCHA will be benefitted, along with all other PHAs participating in the CGP, as a result of the simplified program submission requirements contained in this final rule.

A PHA organization urged HUD to remove the provision in the proposed rule which would permit a PHA to use modernization funds for homeownership development, claiming that section 14(b) and (c) of the Act restricts the use of modernization funds to rental housing developments. This commenter maintained that, since homeownership developments do not provide "rental housing," the provision of the rule which authorizes the use of modernization funds for homeownership developments must be removed. In addition, the commenter requested that HUD add to the final rule the statutory objective of ensuring the continued availability of public housing units "as rental housing."

Initially, the Department wants to clarify that the issue raised by this commenter, as well as all of the ensuing discussion, pertains to Turnkey III and Mutual Help homeownership developments. Public housing rental developments which are planned for homeownership conversion under sections 5(h) or 21 of the Act, or pursuant to HOPE I or III, but which have not yet been sold by a PHA, continue to qualify for assistance under parts 905 and 968 as "low-rent" developments.

With respect to the issue raised by the commenter, HUD has considered this matter in some detail and, as a result, is making a number of changes in this final rule with respect to Turnkey III and Mutual Help homeownership developments operating under the CIAP and CGP. HUD's approach, and its rationale for this approach, is set forth below:

The Department believes, notwithstanding section 14(b) and (c) of the Act which limit the use of modernization assistance for "low-rent housing projects which * * * are operated as rental housing projects * * *," that it has implicit authority under section 509(k)(2)(D)(i) of the NAHA to permit a PHA to use CIAP and CGP modernization funds for a homeownership development. That section establishes the method for counting public housing units, not only for purposes of determining the threshold for participation in the CGP and CIAP, but also for assessing the relative modernization needs of PHAs, and provides specifically that:

> In determining how many units an agency owns or operates *and the relative modernization needs of agencies*, the Secretary shall count each existing unit under the annual contributions contract, except that an existing unit under the *turnkey III and Mutual Help programs may be counted as less than one unit, to take into account the responsibility of families for the costs of certain maintenance and repair* * * * (Emphasis added.)

Thus, this provision authorizes HUD to affirmatively count (to a greater or lesser extent) the number of Turnkey III and Mutual Help units owned or operated by a PHA for purposes of determining its relative modernization needs. Since Congress clearly intended to provide additional assistance under the formula for a PHA's homeownership units, the Department believes that it is implicitly authorized, notwithstanding section 14(b) and (c) of the Act, to permit PHAs to use modernization assistance for their homeownership developments.

In addition, section 516 of the NAHA provides express authority for an IHA to comprehensively modernize it Mutual Help units using no more than a single CIAP grant (or to "substantially rehabilitate" its Mutual Help units using no more than a single CGP grant). In this final rule, HUD is providing that it will count as one unit (instead of as three-quarters of a unit, as proposed in the April 1991 rule), each existing Mutual Help unit under the CGP. However, once a Mutual Help unit has been funded for substantial rehabilitation under CGP, it will be phased out over a period of three years for purposes of the threshold for participation in the CGP, and for the formula. As a result, to the extent that an IHA wants to provide additional limited physical and management improvements for a Mutual Help unit which has already been substantially rehabilitated, it would have to do so using modernization funds allocated on behalf of its other units.

Under both the CIAP and CGP, HUD is limiting the improvements which may be carried out in a Mutual Help homeownership development (aside from the comprehensive modernization/substantial rehabilitation authorized by section 516 of the Act) to those authorized under the definition of "homeownership modernization." In addition, HUD is implementing section 509(d) of the NAHA with respect to homeownership developments, so that a PHA may carry out special purpose management modernization for such developments under CIAP.

HUD is providing a different modernization approach for Turnkey III developments, because of a lack of statutory authority similar to that provided by section 516 of the NAHA for Mutual Help developments, and also because of differences in the statutory requirements under the CIAP and CGP.

For Turnkey III developments under the CIAP only, section 14(i)(1)(C), (D) and (E) of the Act prescribes the types of improvements which may be carried out in homeownership developments, i.e., emergency and special purpose physical and management improvements. After careful consideration, the Department has come to the conclusion that this statutory provision does not authorize the comprehensive modernization of a Turnkey III development under CIAP, as proposed by HUD in the April 1991 rule. For this reason, the Department has removed in this final rule the proposed provision which appeared at §§ 905.615(f)(3) and 968.205(f)(2), and which provided for the comprehensive modernization of a Turnkey III development using a "single CIAP grant."

In its place, HUD is providing that vacant or non-homebuyer occupied units in Turnkey III developments are eligible under the CIAP not only for the physical improvements authorized under the definition of emergency and special purpose modernization, but also for special purpose management improvements, as authorized by section 509(d) of the NAHA. HUD intends to broadly construe by handbook the definition of "special purpose modernization" so as to give PHAs the greatest amount of latitude in carrying out physical and management improvements in vacant or non-homebuyer-occupied Turnkey III developments.

The Department also is removing for purposes of vacant or non-homebuyer-occupied Turnkey III developments the one-time limitation on special purpose modernization, which currently exists under the CIAP. It should be noted, however, that before a PHA may be approved for special purpose modernization of a unit under this section, it must first deplete *all* funds remaining in any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) which pertains to the unit and, to prevent duplicate funding of any activity, exhaust the maximum operating subsidy for which the vacant unit is eligible. In this manner, the

Department hopes to promote the Department's priority objective of accelerating the rate at which homeownership opportunities are provided for low-income families.

In the case of homebuyer-occupied Turnkey III developments under the CIAP, HUD is continuing to limit the improvements which may be carried out in such developments to those authorized under the definition of "homeownership modernization." HUD's approach is based on the fact that the homebuyer family is responsible for the costs of certain maintenance and repair. However, HUD is allowing Turnkey III developments to be funded for management improvements under special purpose modernization.

Finally, HUD notes that, unlike the CIAP, there are no restrictions in the Comprehensive Grant program on the type or extent of assistance which may be provided by a PHA on behalf of its Turnkey III developments, i.e., there is no language under the CGP which is comparable to that of section 14(i)(1)(C), (D) and (E). Hence, HUD has the discretion under the CGP to permit a PHA to substantially rehabilitate its vacant or non-homebuyer-occupied Turnkey III units.

For this reason, HUD has decided to retain with three modifications the provision which appeared at §§ 905.615(f)(3) and 968.310(b)(2) of the April 1991 proposed rule, and which authorized a PHA to comprehensively modernize its vacant or non-homebuyer-occupied Turnkey III units using no more than a single CGP grant. The first modification consists of removing the reference to "comprehensive modernization," and using the term "substantial rehabilitation" instead. Moreover, HUD has included a definition of the term "substantial rehabilitation," which is defined to mean a modernization program for a development which provides for all physical and management improvements needed to meet the modernization and energy conservation standards and which ensures its long-term physical and social viability.

Second, HUD is removing the language which limited the substantial rehabilitation of the development to "no more than a single CGP grant." Instead, HUD is providing in this final rule that a PHA may substantially rehabilitate its Turnkey III units whenever they become vacant or are occupied by a non-homebuyer. As stated above, this approach is intended to modernize and upgrade the units so as to facilitate the sale of homeownership developments to low-income families.

The third modification consists of requiring a PHA to deplete all funds remaining in any tenant equity account or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit before approving funds for the substantial rehabilitation of the unit, and to request the maximum operating subsidy. The April 1991 proposed rule authorized a PHA to retain certain funds in the NRMR even though it was comprehensively modernizing the unit.

Finally, a Turnkey III unit under the CGP which is homebuyer-occupied may receive only limited physical and management improvements, to take into account the responsibility of the homebuyer family for certain maintenance and repair costs. The final rule has been revised to reflect the changes discussed above with respect to Mutual Help and Turnkey III homeownership developments.

B. Transition

HUD was urged to ease the transition from the CIAP to the Comprehensive Grant program in the first year by allowing any PHA with over 500 units to use, without modification, the needs assessments contained in the PHA's existing CPM. In addition, a number of commenters stated that the proposed rule failed to consider the effect of the new CGP on MROP or comprehensive modernization that is underway, but not yet completely funded. These commenters urged that money should be set aside during a transition period to complete such work, or that modernization activities under pending multistage CIAP developments be "melded" into the CGP comprehensive plan, in a manner deemed appropriate by the PHA. Alternatively, they asserted that if PHAs have to "scale down" their planned mod improvements at certain developments, the PHAs should have the option to adjust the intended use and the expenditure schedule for previously received but unspent CIAP funds.

Initially, the Department notes that it does not have the authority to waive the statutory requirement under section 14(e)(1)(A) and (B) that a PHA must submit a physical and management needs assessment. Nevertheless, a PHA may complete its physical needs assessment for the CGP using information which already exists, and which is available to the PHA. Moreover, HUD has eliminated the requirement that a PHA complete Form HUD–52827 with respect to each of its developments, and has simplified significantly the physical and management needs assessments by permitting the assessments to cover broad categories of work, rather than detailed and itemized listings of work. These modifications should facilitate greatly the PHA's ability to use its existing CPM without major modifications.

The Department also wants to point out that it has no statutory authority to establish a set-aside to complete existing CIAP projects. Pursuant to section 14(o) of the Act, each PHA must operate within its formula amount, combined with its unobligated CIAP funds, to complete work already approved under CIAP or work approved in the action plan under the CGP. This means that the PHA may revise work previously planned to make way for competing priorities.

Allocation of Funds Under Section 14 (§§ 905.601 and 968.103).

A. General

One commenter stated that, although the 1987 Act required HUD to propose to Congress alternative methods for allocating modernization funds to PHAs, the Department had failed to do so. The Department disagrees with this comment, noting that in April of 1990, HUD submitted to the Congress the statutorily required report entitled, "Alternative Methods for Funding Public Housing Modernization," which analyzed nine alternative methods for funding the backlog of modernization needs, and three alternative methods for funding the accrual of new modernization needs.

A housing authority objected to HUD's proposal to delete the requirement contained in the October, 1988 proposed rule which stated that, "[T]he Secretary shall review the relative needs for restoring public housing shown by the comprehensive plans in HUD's regional or field offices." The commenter stated that since it is uncertain what kind of plan will be adopted for allocating assistance, any such change to the CGP must be adopted by Congress.

The Department has not adopted this suggestion, since the NAHA established a formula which provides for the allocation of funds under the Comprehensive Grant program. Thus, this statutory allocation of funds supersedes the requirement contained in the 1987 Act which states that the Secretary, in establishing the funding for any agency, shall review the relative needs shown in comprehensive plans. Thus, the statutory language under the 1987 Act is now ineffective and may not be implemented.

Another housing authority asked HUD to spell out in the final rule the allocation formula so that PHAs can run for themselves the formula, using their own numbers. The Department wants to point out that the proposed rule established the explicit methods by which HUD will derive estimates of PHA backlog and accrual need. A PHA can compute these estimates itself, provided it has the necessary validated data. However, in order to compute the actual formula amounts, a PHA would also have to know the validated estimates for all other PHAs. These estimates will require a computer computation that can only be generated at HUD using the complete database for all PHAs and PHA aggregates.

A PHA organization urged HUD to develop and distribute, before the formula is implemented as well as on a continuing basis thereafter, the formula's predictions of individual development-level, and PHA-level modernization needs. The commenter maintained that HUD could then use these predictions to make adjustments to the formula whenever a PHA's real needs are significantly greater than the needs predicted by the HUD formula. The commenter requested that such predictions be based upon estimates of the modernization needs of those developments (either as developed by the PHA or the HUD field office; as contained in a PHA's comprehensive plan; or based upon the actual costs that have been required to complete the modernization of a development with similar characteristics and needs).

The Department notes that there is merit to the commenter's request to evaluate predictions of need at the development level, and PHA level, in comparison to actual need. However, with respect to the current implementation of the formula, the Department notes that the allocation method provided in this regulation is statutorily mandated. However, HUD will consider this commenter's recommendation for purposes of developing its plans for the statutorily required evaluation of the CGP.

A commenter asked that each PHA annually be given a full explanation of its annual grant award amount, which would include for each development: (1) The backlog need for each development (as estimated by the formula, unadjusted by other factors); (2) the adjustments made by HUD (stated separately for inflation, accrual and the deduction of previously received CIAP and MROP funds); and (3) the amount of annual accrual funding for the development, as predicted by the formula. The commenter also requested that HUD include the characteristics of each development, as used by HUD in the formula, so that the PHA could check these factors for accuracy and conformity with the development characteristics supplied to HUD by the PHA.

The Department notes that prior to implementing the formula in FFY 1992, HUD will provide PHAs with the formula characteristics of each development, which the PHA must validate and review for accuracy. Once the data are reexamined by HUD and prepared for use in the formula, they will be provided to the PHA.

Two commenters asked that the formula provide explicitly that, whenever the number of units owned or operated by a PHA is reduced as a result of "breakthroughs" (i.e., the conversion of smaller units into larger ones), HUD will not adjust the PHA's formula share. These commenters also requested that HUD adopt a method for including in the formula those units which are added to a PHA's inventory via development.

The Department wants to clarify that for purposes of determining a PHA's formula allocation amount, it is required by the NAHA to utilize the number of existing units under the ACC. Consequently, to the extent that a breakthrough results in a diminished unit count under the ACC, HUD is required to adopt this reduced unit count for formula purposes. However, HUD intends to phase in over a three-year period the reduced ACC unit count, in a manner similar to that provided for units lost through demolition or disposition. It should be noted, however, that even though breakthrough units result in a reduced unit count under the ACC, the reduction in units will be counterbalanced under the formula, at least to some extent, by the expanded size of the units.

In response to the commenters' second concern, the Department notes that new units added via development will be added to the overall unit count, and their characteristics reflected in the PHA Formula Characteristics Report, as long as they have a DOFA date before the first day of the FFY in which the formula is being run (e.g., a DOFA date of September 30, 1991 or earlier for the 1992 FFY appropriation). New units that are added to the ACC after that date will be counted for formula purposes as of the following FFY.

A couple of housing authorities asserted that the proposed formula allocation system is based upon data which did not take into consideration the cost of lead-based paint abatement These commenters urged that allocations for lead-based paint abatement be separate from, and in addition to, CGP formula allocations. Although the Department has not adopted these comments in this rulemaking, it appreciates the concerns raised by these commenters and intends to examine this issue further in the course of developing its report to the Congress on the relative needs of PHAs for lead-based paint testing and abatement.

A housing authority commented that Congress should appropriate money for various "funding categories," including a Secretary's Discretionary and Emergency fund, as well as individual funds for Indian Housing, Major Redevelopment, Hazardous Materials, the Annual Grants program for large PHAs, and a simplified CIAP for small PHAs. While HUD believes that this comment should more appropriately be addressed to the Congress than to HUD, the Department nevertheless notes that it would not support the establishment of "funding categories." It is HUD's view that a broad-based formula funded program like the Comprehensive Grant program permits PHAs to address any needs they may have, rather than being bound by a categorical grant system, such as the one proposed by the commenter.

B. Formula Factors

Several commenters raised concerns about the adequacy of the statutory formula for allocating modernization funds. One housing authority asserted that the CGP tends to favor PHAs who are mod complete or close to mod complete, while it disfavors PHAs with a large backlog of modernization needs. Another housing authority asserted that the formula favors large inner-city and East Coast housing authorities, while a third commenter asserted that the formula favors large family developments, and suggested that instead of adopting a bedroom standard, that buildings be weighted instead by type of construction and total square footage.

A housing authority stated that the formula fails to consider modernization of a PHA's elderly housing stock, and does not take into account all unique regional needs. Another commenter maintained the formula failed to take into account the degree to which a development had been modernized, even though "this was the most important factor affecting developments' modernization needs at the time of the 1985 inspections." The commenter urged

that this factor be reflected in the formula, rather than as a deduction for past modernization.

A commenter also objected to the requirement contained in the formula which states that HUD shall allocate 50 percent of mod funding via a backlog formula, and 50 percent via an accrual formula, arguing that the backlog formula should play a much greater role in distributing mod money than the accrual formula.

Finally, a commenter asserted that the formula failed to estimate adequately the modernization needs of higher need developments, and suggested that this might be because the HUD/Abt study defined "modernization needs" as the combination of "FIX" plus "ADDS," which effectively eliminated such excluded activities as redesign and reconstruction. The commenter asserted that because redesign and reconstruction activities were not encompassed by the definitions of "FIX" and "ADDS," they were not included in the formula, even though funding for these activities is desperately needed.

The formula factors for assessing a PHA's backlog and accrual needs are, of course, spelled out in the statute. The Department believes that it is not appropriate to seek any change in the formula elements at this time, but rather will consider these concerns in developing its plans for the statutorily required evaluation of the CGP. The Department wants to point out that, consistent with the HUD Report to Congress, it is including in this final rule a provision which authorizes HUD to calibrate upward by a constant ratio of 1.5 the level of backlog need for developments constructed prior to 1985. The purpose of calibrating a PHA's backlog need in this manner is to update the costs of modernizing the categories of backlog need for a PHA's public housing stock.

A commenter objected to the fact that, under the formula, many PHAs are assigned similar annual formula allocations, even though their actual modernization needs are widely divergent. As an example, this commenter pointed out that the public housing stock of Washington, DC and Seattle, Washington are highly divergent, but nevertheless lead to similar per unit allocation amounts under the formula.

The Department concedes that while the formula may result in certain anomalies, by and large these anomalies are infrequent. Moreover, sometimes apparent anomalies are based upon sound reasons. For example, the cost estimates used by the independent contractor, and which are reflected in the formula, take into account the inter-area costs of production. Assuming that all other factors are equal, a high cost area can expect to receive 20 to 30 percent more per unit than a low cost area.

In addition, while a PHA may be known to have certain high need developments, it might also have numerous elderly and low-need developments which tend to lower its average need. Meanwhile, a PHA in the more favored setting, and with the more favorable reputation, might have many large family developments with significant needs.

Thus, HUD believes that the backlog formula represents well the needs found in the inspections conducted for the Abt study of the backlog of modernization needs. While it is true, as stated in the HUD report to Congress, that the accrual portion of the formula is based upon a model, rather than upon direct estimates, the accrual model was the subject of substantial discussion with representatives of public housing agencies and Congressional staff, and was considered to be the best available method for estimating the future accrual of capital needs in public housing developments.

A housing authority requested that HUD establish a minimum set-aside of $10 million per region to address local "unique circumstances," and to complement or "lend balance" to the nationally-based formula. A similar proposal was advanced by two other commenters, who asked that HUD establish a "high needs fund." These commenters urged that the "high needs fund" could be used to provide additional funds for developments or PHAs whose actual needs for modernization or redevelopment significantly exceeded the level of need predicted by the formula.

Although HUD can appreciate these commenters' concerns, it does not have the statutory authority under either the 1987 Act or the NAHA to establish such a set-aside. To the extent, however, that a PHA can establish that it has "unique circumstances," in accordance with the regulatory criteria established in this final rule, it may appeal the amount of its formula allocation, and HUD will make any necessary adjustments to the subsequent year's appropriation.

A couple of commenters maintained that the funding levels determined by the backlog formula are determined almost entirely by two characteristics of a PHA's developments: The number of bedrooms per unit, and the proportion of a PHA's family units that are in a high-rise building. These commenters pointed out that there are a large number of older low-rise developments, which do not have a higher-than-average number of bedrooms per unit, and which have received below-average amounts of mod funding in the past, which appear to be significantly discriminated against by the formula. The commenter argued that this is the largest group of developments for which a systematic adjustment to the formula needs to be made.

The Department notes that, although certain formula factors refer to the number of bedrooms per unit, these factors have different meanings and funding results. For instance, the total number of two-bedroom units in a PHA is a measure of PHA size. However, the average number of bedrooms per unit and the proportion of large-family units proxy the elderly, family, and large family proportions of a PHA, while the high-rise indicator emphasizes the high-rise aspect of family developments.

It should be noted, moreover, that the age and population loss indicators, as well as the cost indicators, can also play a significant role in the backlog formula. Under the formula, the population loss indicator can be expected to assist PHAs facing difficult urban circumstances, many of whom may have large, older, low-rise buildings.

Moreover, all of the statutory formula indicators were based upon previous studies of the factors that cause differences in PHA needs, and those factors were then compared to PHA needs as shown by actual inspections of a large sample of public housing units. The comparison showed very similar measures of need. The comparison method tended to prevent systematic bias for or against certain types of PHAs, although it is very possible that individual PHAs will be overfunded or underfunded relative to some measure of need, such as standardized inspections undertaken for all developments in all PHAs. However, the Department believes that only greater inequity would result if it were to replace a formula which compares well actual inspection data with subjective judgments of need. HUD will consider further this issue.

Two commenters asserted that the regional cost variation factor should not be an independent variable in the formula, but rather an adjustment to both the inputs and outputs of the formula. In this way, they stated, each development would receive 100 percent of the regional cost adjustment that it merits.

The Department wants to point out that, as indicated in the HUD report to Congress, the method used in the formula provided a better fit between

the formula estimates and the cost estimates derived from the inspections than a method that adjusted both the inputs and outputs of the formula. It should be noted, also, that the cost variable adjusts below the regional level, typically to the metropolitan area (or non-metro area) in which the PHA is located.

These same commenters also contended that the population decline variable used in the formula has only a "tenuously plausible" relationship to variations in mod need at the development level. They urged HUD to eliminate this variable, and to add other variables which improve substantially the "fit," such as: degree days (operating budget); household income; prior mod funding received (1981–84); number of children; and percentage of elderly. Both commenters asserted that much of this information is readily available to HUD from Form-50058 and PHA budget submissions.

The Department disagrees with this comment, since the population decline variable has been proven to be effective not only in the statistical sense of fitting the formula to direct inspection costs at the development and PHA level, but also as a proxy of urban social and fiscal stress. In addition, HUD notes that this variable, like all of the other formula variables, is statutorily mandated and HUD has no discretion to eliminate or modify this factor.

Another commenter maintained that the sampling plan for the study was not "adequately stratified" to capture adequate information concerning the needs of high needs developments. As a result, the commenter contended that the total mod needs at the national level are somewhat underestimated, while the needs of higher need developments are greatly under-represented in the formula predictions of PHA backlog at these developments. Moreover, the commenter asserted that the PHAs most likely to be affected by this bias are those that have high-need developments with characteristics for which there are no compensating counter-biases in the formula.

The Department disagrees with this comment, since the sampling was, in fact, stratified to oversample high needs developments. This sampling plan was developed by an independent contractor, and was scrutinized by a research advisory group which had technical advice provided by representatives of PHAs with a large proportion of high needs developments.

A couple of commenters complained that the accrual formula is primarily based upon a set of hypothetical constructs, which does not include certain important factors that contribute to modernization costs, such as the cost of lead paint abatement, improved handicapped accessibility, and other factors required by law. The Department agrees that the accrual formula is based upon a model set of hypothetical constructs; however, this model was based on the actual age of systems data and was constructed with the assistance of public housing experts.

Other commenters pointed out that the actual formula contains no variable indicating that high-rise buildings have a higher rate of accrual of mod needs, even though high-rises are given greater weight in the backlog formula. They suggested that the accrual formula be changed to include either an independent variable, or a proportionality factory, which would scale the rate of accrual for any development to its backlog need.

As noted in HUD's report to Congress, the backlog formula was based on actual inspections, while the accrual formula was based on a physical model. the actual inspections showed that high-rise family units, indeed, had very high backlog needs. On the other hand, the accrual model, in which square footage and average number of systems per unit played a major role, would often predict a lower accrual cost per unit for a high-rise family development than for a comparable low-rise development, because the high-rise development had physical economies of scale such as less square footage of roof per unit. Therefore, the accrual formula reflects these predictions of the accrual model on which the formula is based.

(For purposes of clarity, HUD notes that in construing all terms used in the statutory indicators for estimating backlog and accrual need, it will utilize the meanings cited in Appendix B of the HUD Report to the Congress on Alternative Methods for Funding Public Housing Modernization (April 1990).)

C. Deduction for Prior CIAP and MROP.

The Department received several comments concerning the proposed method for deducting prior years' CIAP and MROP funding. One commenter asserted that, given the "rapidly expanding requirements" for PHAs to spend mod funding for purposes other than those included in the "FIX" and "ADD's" categories, the deduction for CIAP funding should represent no more than 60% of the CIAP funding each PHA has received beginning with FY 84. In addition, the deduction for MROP funding should represent no more than 40% of the MROP funding each PHA has received, since an even higher proportion of MROP than of CIAP funding must be spent by the PHA for items that exceed "FIX" and "ADDS."

In addition, a number of commenters urged that the deductions for both CIAP and MROP be made on a development-specific basis, provided that the deduction for any development never exceed the mod backlog need predicted by the formula for that development as of January, 1986 (i.e., there should never be a net negative figure as a result of the deduction which would be carried over and applied to the PHA's other developments). On the other hand, two other housing authorities and PHADA asserted that the deduction for past mod should not exceed 60%, and should be applied on a PHA-wide basis.

Meanwhile, a housing authority maintained that the deduction for previously received mod funding should be totally disregarded. It stated that the enormous amount of backlog and unmet need, along with the additional costs of testing and abatement of lead-based paint and 504 requirements would, in most cases, offset any mod funding previously received. The commenter concluded that, since neither one of the proposed systems for deducting prior mod seemed to be adequate, HUD should allocate mod funds without *any* deductions for previously-received modernization funds.

A municipality commented that the two methods proposed by HUD for deducting previously received mod funds would produce such different results that each method should be tested on a series of PHAs before a decision is reached. However, the commenter added that the deduction of funds for any specific development should never exceed the amount of need predicted for that development by the formula.

A PHA organization asserted that the proposed rule failed to provide sufficient information on the differences between the two methods of deducting prior years' mod funding to enable the public adequately to compare their impact.

Another commenter disagreed with the proposed adjustment to reduce substantially the backlog formula amount for funds received in the mid-1980's, but less substantially for funds received in the most recent years.

Another municipality argued that since the PHA has not always been involved in determining the level of need for which funding has been provided under the CIAP and MROP programs, it was unfair to apply a deduction based upon their mod funding under these programs. This commenter also asked that, in any event, the 60% deduction should be applied for 1984

through 1991 based upon real dollars, rather than as a straight percentage.

Another commenter asserted that it made little sense to use development funding in general as an adjustment to a formula which already considers the age of developments.

In addition, a commenter maintained that it was unclear whether HUD intended, after deducting the amount of CIAP and MROP funding received by a PHA from the January 1986 backlog estimate, to continue deducting mod funds received under the CGP. This commenter pointed out that if HUD intended to follow the latter approach, the backlog needs of most PHAs could become negative in a short period of time.

A couple of commenters asserted that the Abt/ICF study substantiated the fact that a relatively high proportion of each PHA's CIAP funding was being spent for items which fell within the "FIX" plus "ADDS" categories. However, these commenters stated that since that time, PHAs have been spending a larger proportion of their mod money for activities that do not fall within the original "FIX" plus "ADDs" categories, especially in FY 1989, 1990 and 1991. These commenters attribute this pattern to the fact that PHAs have been spending a significant amount of their mod funds on activities that are related to hazardous materials abatement and handicapped accessibility. Consequently, the commenters concluded that the proportion of these expenditures that would be deducted from the backlog estimate needs to be reduced accordingly.

Finally, a commenter maintained that although HUD proposed in its April 1991 rule various methods for making deductions to the backlog amount, the Department failed to propose any particular method. This commenter then asserted that such a provision should have gone through notice-and-comment rulemaking, rather than being left to handbook instructions. In addition, the commenter asserted that HUD should have calculated and specified the impact for individual PHAs of alternative methods of deducting prior mod, including the impact of HUD's own proposed method, and any other methods considered by HUD.

Initially, HUD notes that the deduction for prior CIAP and MROP is mandated by statute pursuant to section 14(k)(2)(A) of the Act, and HUD does not have the discretion to eliminate this requirement. However, after considering all of the comments, the Department has decided that, because CIAP and MROP met some needs other than those estimated in the formula, it will deduct from the backlog estimate 60 percent of previously received CIAP funds, and 40 percent of previously received MROP funds (and only that amount of MROP which does not exceed the estimaated backlog need of a specific MROP development).

In addition, HUD will deduct no more than 50 percent of a PHA's total estimated backlog need to reflect amounts previously received for CIAP and MROP funding. Equally important, prior to any deduction of CIAP or MROP, all developments constructed prior to 1985 (the date of the Abt inspections) will have their estimated backlog multiplied by 1.5 (or 50 percent)—an adjustment which updates inflation, accrued need, and pipeline funding, and brings the dollar amount of modernization need in 1986 to the equivalent dollar amount of unfunded modernization need. This adjustment provides a current base from which to deduct past modernization funding.

As an example, suppose that a PHA has one development constructed prior to 1985 which: (1) Consists of 500 units; (2) has an estimated formula backlog need of $1 million total; and (3) received a total of $1 million in CIAP funding from 1984 onwards. Prior to the partial deduction of recent CIAP funding, this PHA would have its estimated backlog (based on statistical analysis of a national sample of 1985 inspection cost patterns) raised by 50 percent to estimate its need as of 1991 (based upon national estimates). Thus, its estimate would be raised from $1 million to $1.5 million. Only then would 60 percent of its recent CIAP funding be deducted, subject to an overall cap of 50 percent on the PHA. In this example, 60 percent of $1 million in CIAP comes to $.6 million. Since this amount is less than half of the adjusted backlog estimate ($.75 million is half of $1.5 million), the net unfunded backlog used for computing formula shares of backlog would be $.9 million (or the difference between the adjusted estimated backlog of $1.5 million and the partial deduction of recent CIAP of $.6 million).

This procedure corresponds to the method used in Chapter Two of the 1990 HUD report to Congress. Moreover, the HUD report to Congress suggests why a straight percentage adjustment would be more equitable for undating unfunded backlog, rather than a method which combines backlog and accrual estimates. The primary reasons given is that this method avoids indiscriminately mixing a backlog formula based upon inspections, with an accrual formula based upon a model.

Several Indian housing authorities objected to the proposed requirement that the deduction for past modernization funds in Mutual Help developments begin with FY 1984, and asked that FY 1988 be used instead. The IHAs asserted that only four Mutual Help developments and 27 low-rent developments were inspected for sample estimates of backlog and accrual needs. In addition, the IHAs pointed out that the work items addressed in Mutual Help developments during the deductible funding years were not comprehensive repair programs.

HUD has not adopted this comment, since it believes that there is no basis for treating IHAs differently than PHAs with respect to deducting recent CIAP funds from 1984 onwards. As part of the Abt study, 354 units were inspected in 31 Indian Housing developments, which were spread across 20 IHAs and six HUD regions. As with other PHAs (except for the New York City Housing Authority), IHAs under the CGP will have their funding based upon formula estimates. Because the backlog and accrual formulae give high funding weight to a high average number of bedrooms per unit, and because the accrual formula additionally gives a high funding weight to single-family units, IHAs will be treated equitably under the formula. Moreover, because IHAs tended to be underfunded with respect to the CIAP relative to their estimated formula backlog need, the effects of the CIAP deduction will also be less for IHAs than for the average funded PHA.

D. Newly Constructed Units.

One housing authority agreed explicitly that some portion of mod funds should be deducted for newly constructed developments in the same manner that recent mod funds are partially deducted from the estimated backlog need for older developments. However, two other commenters objected to such a deduction, claiming that the premise that newly constructed units do not have a backlog of needs is faulty. Specifically, one commenter maintained that development cost containment guidelines may have led to significant maintenance and modernization problems much earlier in the physical life cycle of the units than expected, which would not then be included in the accrual needs estimates.

Another commenter asked HUD to clarify that the date of the initial backlog estimates is January 1986, and requested specifically that the backlog be adjusted forward to a specific date (e.g., through January 1990 or January 1991). In this way, the commenter contended that developments

constructed after that time would simply have no backlog needs, and the value for their backlog estimate in the formula would be set at zero. These developments would, however, have an accrual estimate based upon the characteristics in the formula.

The Department has decided not to change the formula to adjust a PHA's backlog for newly constructed units which entered its inventory between 1985 and September 30, 1991. However, newly constructed units with a DOFA date as of October 1, 1991 or thereafter will have their backlog set to zero. HUD also wants to point out that for purposes of computing unfunded backlog need, the formula procedure will adjust backlog to 1991 levels. Developments with a DOFA date of October 1, 1991 and thereafter will be assigned zero formula backlog, but will receive their full formula share of accrual.

In addition, the Department notes that this final rule includes a provision on acquired developments. Such developments with a DOFA date of October 1, 1991 or thereafter will be considered to have a zero backlog, but will receive their full formula share of accrual.

Modernization and Energy Conservation Standards (§§ 905.603 and 968.115)

A PHA organization asserted that since the appropriate standard for assessing the quality of physical improvements is the modernization standards, HUD should remove from the comprehensive plan all references to the Housing Quality Standards.

The Department wants to point out that while the proposed rule contained a reference to the HQS, this was contained in the preamble and not in the regulation itself. Since the Department recognized that it may take several years for a PHA to meet the modernization and energy conservation standards, the HQS serve as a useful, interim measure of progress toward those standards. While the Department is aware that the HQS do not address all physical deficiencies, they can be used as a relative measure of whether the PHA is providing "decent, safe, and sanitary living conditions." The PHMAP contains the HQS requirement.

A housing authority asserted that the HQS conflict with the Lead-Based Paint Guidelines concerning defective paint surfaces. In addition, this commenter pointed out that the HQS do not deal with any other hazardous materials which need to be addressed in any "bona fide" needs assessment. As a result, the commenter stated that the HQS must be revised before it can be used to determine improvement needs under the comprehensive plan.

The Department wants to clarify that under the PHMAP it intends to use the HQS (codified at § 882.109) as a relative measure of whether the PHA is providing "decent, safe, and sanitary living conditions. However, HUD will not utilize the provisions under the HQS which address lead based paint requirements, but will use instead the Lead Based Paint Interim Guidelines, published on April 18, 1990 at 55 FR 14556, which were subsequently revised and redistributed in October 1990, and which are applicable to the public housing program to determine "decent, safe and sanitary living conditions" with respect to lead based paint. Other environmental concerns will continue to be governed by the HQS requirements (see § 882.109(k)). HUD received a comment claiming that the "mandatory standard" concept has no statutory basis under the Act, and should be dropped by HUD. Another commenter asserted that the rule is overly restrictive in terms of only allowing improvements necessary to meet HUD modernization and energy conservation standards. This commenter stated that the intent is for residents to have the discretion to play a major role in determining the needs for their development, and their recommendations may go well beyond HUD's "modernization and energy conservation standards."

The Department wants to clarify that the modernization standards are comprised of both mandatory and development-specific standards. The mandatory standards are intended to provide decent, safe, and sanitary living conditions for all public housing, including corrections of violations of basic health and safety codes, and to address all deficiencies, including those related to deferred maintenance. A PHA may choose to exceed the mandatory standards by carrying out improvements to the development-specific standards. These standards permit a PHA to undertake improvements that are "necessary or highly desirable" for the long-term physical and social viability of a particular development, which include site and building security. While HUD cannot prohibit a PHA from carrying out with non-Federal funds improvements which exceed the development-specific standards, it cannot condone the use of HUD funds for such a purpose.

A commenter maintained that any modernization funds that the PHA obtains from non-HUD sources should not be used to decrease a PHA's funding eligibility under any HUD modernization project. The Department wants to emphasize that it does not intend to, nor does it have any authority to, reduce the level of the CGP modernization grant as a result of State or local government contributions to a PHA, and strongly encourages PHAs to explore with their State and local governments the possibility of obtaining additional funding to meet their modernization needs.

Definitions (§§ 905.102 and 968.305)

A commenter asked that the definition of "action plan" be expanded to indicate that the plan is supposed to be not only realistic, but also based upon a PHA's and HUD's best estimate of funding likely to become available. In addition, this commenter urged that the definition of "action plan" be clarified to state that physical and management improvements are to be included in the action plan. HUD agrees with these comments, and has made the necessary changes in this final rule.

Another commenter objected to HUD's reserving in its April 1992 proposed rule the definitions of "improvement plan" (IP) and "memorandum of agreement" (MOA). It asserted that these definitions must be included in a proposed rule subject to public comment. While the Department agrees that these definitions are subject to notice and comment rulemaking, they were, in fact, included as part of HUD's proposed PHMAP rule on which public comments were solicited. Accordingly, HUD is including in this final rule the definitions of "improvement plan" and "memorandum of agreement" which were incorporated into the interim PHMAP rule.

A PHA organization commented that HUD's proposed definition of "lack of management capability" was unclear, and should either be dropped, or clarified and made appropriate to the CGP. The Department agrees with this comment, and has removed this definition in its entirety from the final rule.

A commenter noted that HUD's definition of "modernization project" would result in each year's funding allocation being a separate "modernization project," which would result in an extremely complicated way of accounting for such funds. The commenter urged that the definition be revised so that the CGP accounting system for the various annual allocations can be consolidated and streamlined.

The Department has decided to eliminate the proposed reference to "modernization project" in order to

provide greater flexibility to PHAs in using each annual grant. Although each annual grant must have a unique grant number, it will incorporate by reference all of a PHA's developments. This approach will enable the PHA to add or delete developments from each annual statement, as necessary, without a formal ACC amendment.

HUD received a number of comments concerning the proposed definition of "PHA-wide resident group." The commenters asserted that the requirements far exceeded those authorized by statute and were unreasonable. These commenters stated that the special election of a resident from each development was an expensive, cumbersome, and unnecessary procedure, and that residents and resident councils could represent themselves. HUD was asked to remove the definition in its entirety, and to permit PHAs to work with the duly elected resident groups that are available. Other commenters asserted that the term should be amended to require consultation only where a PHA-wide resident group actually exists.

The Department has eliminated the requirement for a PHA-wide resident group. Instead, the Department has included a definition of "resident groups" and of "partnership process" to assure that the PHA/resident group partnership process is implemented in all aspects of the CGP, and throughout all of its developments. The PHA, however, has the option of implementing the partnership process through various alternative types of democratically elected resident groups, such as PHA-wide resident groups, area-wide resident groups; newly elected resident groups; RMCs; or other existing resident groups. HUD believes that this modification to the program will provide PHAs with greater flexibility in meeting the resident participation requirements established under the rule, while ensuring that residents are involved in a meaningful way in all aspects of the planning, development, implementation and monitoring of the CGP.

Several Indian housing authorities objected to the definition of "IHA-Wide Resident Group," maintaining that the definition is inappropriate for the Mutual Help program. They recommended instead that the IHA-wide resident group be composed of two percent of all homebuyers occupying units in all developments listed in the IHA's comprehensive plan, not to exceed five persons. The commenters urged that such individuals be elected by homebuyers from each geographical area in which developments are located.

The Department is not adopting the recommendation to cap Mutual Help representation at two percent of the homebuyers, since it believes that this would establish an arbitrary cap on the statutory requirement that residents of each of the developments covered by the comprehensive plan be involved in the modernization process. However, as discussed above, HUD has made a number of changes with respect to the composition of "resident groups" so that, to the extent that a democratically-elected resident group already exists within a Mutual Help development, it may be used for purposes of meeting the resident participation requirements established in this final rule.

An IHA asked HUD to revise the definition of "homeownership developments," so that items which otherwise would have been excluded as eligible costs would now be regarded as eligible costs, e.g., nonroutine maintenance or replacements, additions, and items that are the responsibility of the homebuyer families.

HUD notes that, in addition to the physical improvements currently authorized by §§ 905.615(f)(1), 905.666(d)(1), 968.205(f)(1) and 968.310(d)(1), the Department is also implementing in this final rule section 516 of the NAHA which provides for the comprehensive modernization of a Mutual Help unit using no more than a single CIAP grant, or the substantial rehabilitation of such a unit using no more than a single CGP grant. As such, all needed repairs can be completed at no cost to the homebuyer. However, other than the one-time comprehensive modernization/substantial rehabilitation authorized by section 516, maintenance for a homeownership unit (including nonroutine maintenance, replacements and additions) remains the responsibility of the homebuyer and is not an eligible CIAP/CGP cost.

It should be noted, however, that the Department has decided to implement with respect to Mutual Help (and Turnkey III) developments section 509(f) of the NAHA to permit such homeownership developments to carry out special purpose management improvements. Consequently, the current CIAP prohibition on management improvements for homeownership developments is being removed in this rulemaking.

A housing authority commented that it did not believe a definition of "special purpose modernization" was necessary under the new flexible grants program, since PHAs would have flexibility to do this type of work anyway. However, another housing authority asked HUD to clarify in the final rule that special purpose mod is permissible under the CGP, as long as the costs are included in the 5-year plan. Similarly, a third commenter asked HUD to clarify that the CGP is designed to allow PHAs to utilize their funding for a comprehensive list of modernization activities, and not necessarily to comprehensively modernize any particular development.

The Department notes that "special purpose modernization" is a term used in the CIAP, but which is obsolete (along with other "mod types") under the Comprehensive Grant program. A PHA may set forth in its action plan a variety of approaches to modernization, depending upon the type of work needed at its developments and its estimated funding amounts. For example, a PHA may plan substantial rehabilitation at one development, but only selected work items at another development. Any work items which formerly were eligible under special purpose mod under CIAP continue to be eligible under the CGP.

Finally, one commenter asked that the definition of "emergency work" be expanded to include not only an "immediate" threat to resident life, health and safety, but also an "imminent" threat. HUD has not adopted this suggested language, since section 14 refers specifically to "an immediate threat." The Department notes, however, that to the extent that fire safety costs meet the statutory definition of "emergency work," they would qualify as eligible costs under this section.

Eligible Costs (§§ 905.666 and 968.310)

A number of IHAs urged HUD to remove the proposed requirement that Mutual Help homebuyers who agree to have their units comprehensively modernized must agree to have their homebuyer agreements amended to reflect the cost of the comprehensive modernization. These commenters asserted that amending the homebuyer agreement would only circumvent the residents' and HUD's goal of homeownership. Moreover, they contended that since IHAs will continue to pay payment-in-lieu of taxes (PILOT), as well as insurance coverage under the minimum administrative payments, most residents will continue to pay this minimum amount only and none of the actual comprehensive repair cost will be reimbursed by the residents.

The Department is persuaded by these comments and, since it firmly supports the goal of promoting homeownership opportunities for residents, it is removing the requirement in the Mutual

Help program that the homebuyer agreement must be amended to reflect the cost of comprehensive modernization under CIAP, or substantial rehabilitation under CGP. Moreover, the Department notes that *not* charging the homebuyer is fully consistent with the Department's goals for homeownership, as stated in HUD Notice PIH 91–29, which provides IHAs with an option for determining purchase price schedules. This may result in homebuyers acquiring title to homeownership units earlier than anticipated.

The Department is not removing the requirement in the Mutual Help or Turnkey III programs that the homebuyers agreement be amended to reflect the cost of certain limited physical improvements under homeownership modernization in CIAP and the CGP. The Department had previously excluded the costs of correcting development deficiencies, energy audits, cost-effective energy conservation measures, and lead-based paint testing and abatement from this requirement. In this regulation, the Department is excluding costs associated with physical repairs necessary for handicapped accessibility. However, the Department believes that work necessary to correct health and safety items was originally the responsibility of the homebuyer which has been deferred to the point where further deferral could threaten the health or safety of the occupants. Therefore, the Department believes it is appropriate to charge homebuyers for the repair of health and safety items.

A housing authority maintained that the task of defining eligible improvements under the CGP should be left to the PHAs, not HUD, and that HUD's role should be geared toward evaluating how PHAs use mod funds in general. However, another housing authority asserted that HUD must establish a clear, definitive list of eligible work items and expenditures so that residents attending the public meetings would have a clear understanding of what the CGP involves.

The Department believes that its statutory responsibility to assure that work funded by the CGP is consistent with the statutory purposes of the program makes it necessary for these regulations to include a list of eligible work items. That list has been clarified and extended significantly in this regulation to assist PHAs and residents to carry out their roles in the planning and operation of the program. Generally speaking, all costs which are eligible under the CIAP are also eligible under the Comprehensive Grant program. The only major distinctions in eligible activities between the two programs are that the CGP authorizes the establishment of a replacement reserve, allows audit costs directly attributable to modernization, and establishes different rules with respect to homeownership developments, as addressed elsewhere in this preamble. The Department intends to provide additional guidance in the CGP handbook concerning eligible activities under the CGP.

Several comments were received concerning the proposed 10 percent cap on administrative costs, with some commenters requesting that alternative caps of 15, 20, or 25 percent be used instead. A number of commenters maintained that an increase in the cap was necessary to take into account the cost of obtaining professional assistance to prepare and revise periodically the comprehensive plan, while others urged that the caps be increased only for the first year of the program to take into account the need for planning. Other commenters noted that it would be helpful to apply the limitation on soft costs over a longer timeframe, either over the five-year period covered by the action plan, or for a shorter period of time. Yet another commenter urged that the category of fees and costs be considered under a separate limitation, based on a relationship to the "design package's associated hard costs," while architectural and engineering fees could be included within the minimum 80% hard costs funds. In addition, a commenter asked that the final rule authorize explicitly the use of modernization funds for outside architectural, engineering, or other assistance needed to prepare a PHA's comprehensive plan.

The Department has decided not to impose any limitation on architectural/engineering or consultant fees charged to account 1430, since such a limitation appears unnecessary in light of previous funding history. The Department has also reconsidered the eligibility of certain administrative costs charged to account 1410, such as telephone and facsimile, and has included these items as eligible costs in this final rule.

However, HUD has decided to limit to no more than seven percent the amount of the annual grant which may be used for administrative costs (charged to account 1410). The cap would exclude any costs related to in-house LBP testing, in-house architectural/engineering (A/E) work in lieu of contracting for such services, or other special administrative costs required by State, local or tribal law. The Department believes that the seven percent cap is generous in view of previous funding history, as determined by a HUD survey of the administrative costs of all PHAs funded in FY 1990, which reflected the following:

Size of PHA	Average percentage of grant used for administration
1–249 units	3.47%
250–499 units	3.41%
500–1249 units	3.95%
1250–6599 units	3.93%
More than 6599 units	6.88%

Since these percentages include costs which the Department is now excluding, HUD believes that the seven percent cap on administration costs is realistic and generous.

However, HUD has included a provision in this final rule which authorizes a PHA whose jurisdiction covers an unusually large geographic area to utilize an additional two percent of its annual grant for costs related to travelling to its developments on CGP-related business, where specifically approved by HUD. For this purpose, "an unusually large geographic area" is an area served by a PHA whose offices are physically separated from the majority of its developments by distances which require overnight travel and/or travel by air or other commercial carriers, e.g., a statewide PHA with developments in multiple localities; a regional PHA with developments in multiple counties or states; or an Alaska IHA with developments in multiple villages.

A housing authority asserted that PHAs with scores below "C" on PHMAP indicators should have the flexibility to increase management improvement costs to twenty five percent, provided that a maximum of 10 percent would be used for management improvements not directly triggered by PHMAP deficiencies.

The Department rejects this suggestion since it believes that this would be a perverse incentive for poor management. In addition, the CGP is primarily intended to be a physical improvement program, with management improvements, either PHA-wide or development-specific, being eligible for funding only to upgrade the general operation, sustain the physical improvements, or correct management deficiencies identified in the comprehensive plan. The Department would like to point out that operating subsidies should be the primary source

of funding for management improvements, not CGP funds, and that many management improvements may be undertaken within the PHA's operating budget, or at no extra cost. Accordingly, the Department is retaining the 10 percent annual limitation on management improvements, which is consistent with the existing limitation on management improvements in the CIAP.

A housing authority asked that salaries, including benefits for craftsmen and superintendents to perform construction work as "force account," be charged against physical improvement costs, not as administrative costs for technical salaries. The Department notes that, in accordance with instructions set forth in the Low-Rent Housing Accounting Handbook, 7510.1, the salaries of force account labor are charged to the appropriate development account related to the type of work being carried out, i.e., the appropriate physical improvement costs. As such, if work is being carried out on dwelling structures, then force account labor costs would be charged to account 1460 (dwelling structures). Force account labor costs should not be charged to administration.

A commenter noted that, since the proposed rule would prohibit a PHA's use of grant funds for luxury improvements, it should similarly prohibit such by RMCs. The Department agrees that the prohibition against using grant funds for luxury improvements applies equally to a PHA as it does to an RMC acting on a PHA's behalf. HUD has made the necessary clarifications in this final rule.

A housing authority expressed its agreement with the provision in the proposed rule which stated that social service types of activities would not be considered eligible management improvements. The Department has retained this provision without modification; thus, the provision of direct social services by either contract or force account labor is not an eligible cost under the CGP.

A PHA organization objected to HUD's proposed two-prong test for determining when a PHA can allocate funds to its reserve fund, arguing that the test cannot be expected to cover the variety of situations which may arise. This commenter maintained that a third, more general, provision should be added to the final rule, which would permit funds to be allocated to a PHA's reserve "for other reasons, as contained in the PHA's approved comprehensive plan."

Other commenters objected to HUD's imposing any limitations whatsoever on the establishment of a reserve account, arguing that since section 14 of the Act does not impose any restrictions upon the ability of a PHA to allocate its modernization funds to a reserve account, neither should HUD.

Two housing authorities maintained that the eligible ways to carry a reserve for future needs is too limited, and recommended that HUD authorize PHAS to set aside a certain percentage (e.g., five to 10 percent a year), into a general reserve to supplement future years' funding, as needed.

However, one housing authority asserted that PHAs should be precluded from developing huge unused capital reserves. This commenter maintained that limits should be established and enforced, and that amounts greater than the established limits could be credited to the PHA by formula or other procedure, and retained for the PHA. This method, according to the housing authority, would allow PHAs to build up money to carry out ongoing mod programs.

Finally, a couple of commenters urged HUD to require each PHA which proposes to set aside some of its annual grant in a modernization reserve to establish a separate modernization reserve account to ensure that funds provided for modernization (and any accruing interest) will be accounted for and used for the intended purposes.

In response to these comments, the Department notes that it has decided to retain the proposed two-prong test for the establishment of a reserve fund. Under this test, the PHA must be able to establish that: (1) Annual CGP funds are not needed for existing needs, as identified by the PHA in its needs assessments; or (2) a proposed physical improvement requires more funds than the PHA would receive under its annual formula allocation. However, HUD has included in this final rule a provision which permits a PHA to allocate a portion of its annual CGP funds to its replacement reserve for management improvements if: (1) The particular management improvements require more funds than the PHA can use under its annual formula allocation (i.e., greater than 10 percent of its annual grant); or (2) the PHA needs to save a portion of its annual grant in order to combine it with a portion of its subsequent year(s) grants, to fund the work item.

Funds may still be obtained for natural disasters. PHAs are required by the statute to include in their physical needs assessments the replacement needs that will be required to be met in the next five years. Action plans should respond to these needs by stating which replacements are anticipated to be funded in the five years of the plan. The reliable nature of the annual grant should eliminate the need for a replacement reserve in most cases and allow PHAs to use all of their currently awarded funds to meet existing needs. Finally, HUD wants to clarify that a PHA that has funds in its replacement reserve must apply these funds to an emergency before it is eligible to receive funds from the emergency reserve under §§ 905.601(b) and 968.103(b).

A number of commenters stated that if HUD required PHAs to transfer all interest on the reserve account to the operating budget, such a policy would serve only as a disincentive to PHAs to save funds from one year to the next. These commenters asserted that interest received by the PHA on any funds in mod reserve accounts (including those into which some or all of a PHA's formula allocation funds have been placed) should be retained in those accounts and continue to be available for use in conjunction with the PHA's mod program, rather than transferred to other purposes.

The Department agrees with these comments, and notes that it intends to exclude the CGP from the existing requirements under §§ 905.725(e)(1) and 990.109(e)(1), which provide that regular program income includes interest on grant funds. As such, HUD will not consider as program income the interest accrued by a PHA on its replacement reserves, so that these funds are not subject to offset against operating subsidy amounts. A PHA may use its accrued interest for any eligible modernization activity under the CGP, and there is no time period in which either the replacement reserves or the accrued interest must be used. The Department has included a requirement, however, that a PHA must report in its annual performance and evaluation report on the obligation and expenditure of these funds. In addition, the PHA shall invest the replacement reserve funds in order to generate a return equal to or greater than the average 91-day Treasury bill rate.

A housing authority asserted that the proposed CGP requirements fail to provide PHAs with adequate flexibility in combining several years of formula allocation funding, and asked that the final rule provide for a carryover of funds to accomplish comprehensive modernization. The Department disagrees with this comment. Since PHAs will be receiving funding every year, there is no need to carry over funds from one year to the next in order to accomplish comprehensive modernization. Moreover, PHAs are not required to obligate and expend all

funds from an annual allocation in that year; these funds may be obligated and expended over a period of several years if necessary to accomplish the work identified in the annual statement.

Reserve for Emergencies and Disasters (§§ 905.667 and 968.312)

A housing authority commented that a $75 million set aside for emergencies is insufficient for 3,200 housing authorities, and questioned whether HUD derived this figure based on past actual natural disaster and emergency needs.

Another housing authority maintained that funding for unpredictable and uncontrollable events should not be reimbursed from future years' grants. The commenter suggested, instead, that a national pool be established in which funds could be obtained as needed, and that only when a disaster results in a work item being moved up in scheduled replacement timeframes should some future adjustment in grants be attempted.

The Department wants to point out that the $75 million set-aside is mandated by statute pursuant to section 14(k)(1) of the Act, and exceeds HUD's estimate, based upon its past experience, of what would be required to meet emergencies and natural or other disasters. The size of the reserve for natural disasters was based upon a year in which several disasters of the scale of Hurricane Hugo and the Loma Prieta earthquake occurred. With respect to the reserve for emergency modernization needs, HUD analyzed data pertaining to prior years CIAP emergency funding, as discussed in the HUD Report to Congress.

The Department believes on the basis of these historical analyses, and the fact that the reserve is available only to PHAs and IHAs operating under the CGP, that the $75 million reserve will be more than adequate to meet the need for emergencies and natural or other disasters, since PHAs must first use their annual formula allocation of CGP funds, any other unobligated CIAP or CGP funds, or replacement reserve, for emergencies before they can apply for funds from the $75 million reserve. (PHAs and IHAs under the CIAP will continue to receive assistance for emergencies and disasters in accordance with the existing CIAP requirements and procedures.)

The Department also notes that funding for repair and replacement needs which arise from natural and other disasters will not be required to be reimbursed from future years' grants, since these unpredictable and uncontrollable events cannot, by their nature, be accounted for under the formula.

On the other hand, emergency repair needs are not different in kind from the types of repair and replacement needs identified in the Abt survey, and which are estimated under the formula for both the backlog of modernization need, and the accrual of new need. Rather, they differ only in their relative urgency. For example, a boiler failure may lead to an immediate need for replacement in order to provide heat and hot water for tenants, and thus fall into the category of emergency need. However, a planned replacement of the same boiler would not be an emergency but would be part of ongoing modernization work, and would be identified as either a backlog or an accrual need. Thus, since the repair and replacement work which becomes an emergency is already included in the work on which the formula is based, and for which the formula provides funding, it is appropriate for a PHA which has no unobligated formula or other funds available to address emergency needs to be required to repay emergency funding out of future years allocations of CGP funds, as mandated by NAHA.

A housing authority stated that although the proposed rule provided that HUD would process immediately any requests for funds from the emergencies and natural disaster reserve, the final rule should specify a maximum response time. The PHA maintained that 20 days to respond would be a reasonable period of time, and that HUD's failure to respond to a request within that time period should result in automatic approval.

Although the Department intends to process requests for funds for emergencies and natural disasters as expeditiously as possible, it believes that a processing timeframe is more appropriate for the CGP companion handbook, rather than this final rule. Consequently, HUD has not made any modifications in response to this comment.

Allocation of Assistance (§ 905.669); and Allocation of Assistance for Troubled and Non-Troubled PHAs (§ 968.315)

A. Submission of Data

A commenter asserted that since the backlog need of individual developments represents their needs at a particular point in time (i.e., 1985), and since changes in a development's characteristics after 1985 will not affect the estimate of its backlog needs in 1985, PHAs should only have to submit one time data that are used solely to estimate backlog needs of individual public housing developments.

The Department agrees with this comment and is providing in this final rule that each PHA, in its first year of participation in the CGP, must verify and provide to HUD, in a form and at a time to be prescribed by HUD, data concerning PHA and development characteristics so that HUD can develop the PHA's annual funding allocation. After its first year of participation in the CGP, and PHA is not required to submit formula characteristics data to HUD, but is required to respond to data transmitted by HUD if there have been changes to its inventory from that previously reported, or where requested by HUD.

A housing authority objected to the provision in the proposed rule requiring that the formula characteristics report be certified and approved by Board resolution. It stated that the information to be contained in the report is already on file at HUD, and is submitted by PHAs in other required reports. Consequently, the commenter requested that the report be provided by HUD, and simply verified and signed by the PHA's executive director.

The Department wants to clarify that while it does have most of the information to be contained in the formula characteristics report, and plans to supply this information to PHAs for verification, it does not have all of the necessary information on file (e.g., the actual construction date for acquired properties). Since this information is crucial in determining the funds to be allocated to a PHA, the Department believes it is important for the PHA Board to make the determination that the information in the report reflects its understanding of the characteristics of the PHA, as well as its belief that this is the basis on which the PHA should receive mod funding. However, as noted above, a PHA shall only be required to supply and verify information for the formula characteristics report for its first year of participation in the CGP. Thereafter, such data shall be limited to verifying changes to the PHA's reported inventory, or otherwise responding to requests by HUD.

A commenter urged HUD to establish a timetable for the CGP, whereby HUD would notify PHAs of their expected formula amounts by November 1; PHAs would submit their plans to HUD no later than January 1; HUD would approve the plans by February 1; and funds would be obligated by March 1. This commenter also noted that to meet this schedule, any revisions to the PHA's comprehensive plan (including

the five-year action strategy), and the approval of any amendments to the plan, would need to be completed each year no less than 90 days before the beginning of the new FFY.

The Department intends to notify PHAs as early as possible of the schedule, although it is unable to specify in this final rule the exact dates, since the schedule will vary from year to year depending upon the availability of the Department's appropriation.

For FFY 1992, HUD intends to provide PHAs with preliminary formula estimates in the winter of 1991, and with final formula amounts in the spring of 1992. PHAs will submit comprehensive plans and annual statements in the summer of 1992. HUD will review these and complete grant reservations by the end of the 1992 fiscal year (i.e., September 30, 1992).

For FFY 1993 and most other years, HUD intends to provide PHAs with preliminary estimates based on the President's budget in the previous summer and revised estimates based on the congressional appropriation of modernization funds in the fall. The summer estimate will enable the PHA to begin the planning process early.

PHAs will submit annual statements in early winter. After they have submitted their annual statements to HUD for review, PHAs will receive their final formula amounts. This will permit PHAs to receive their annual grant early in the year. HUD will complete its review of the annual statements and complete grant reservations by the spring. Each year, the program year will close on June 30, and PHAs will submit their performance and evaluation report by September 30.

A commenter noted that the proposed rule failed to address the possibility that an IHA may elect to enter the new program in the initial funding cycles, yet still wish to do so at a later date without the imposition of penalties or other serious repercussions. The Department agrees with this comment and, accordingly, has made a couple of changes in this final rule. First, HUD is eliminating the requirements that a PHA must affirmatively state on an annual basis that it intends to participate in the CGP. Any PHA which elects not to participate in the CGP in any FFY may nevertheless participate in the program in any succeeding year without adverse consequences.

In addition, the Department would like to clarify that if a PHA fails to submit the comprehensive plan/annual statement by the HUD-established deadline, the PHA may still submit such data to HUD at any time prior to 75 calendar days before the end of the FFY. However, it should be noted that the purpose of the HUD-established deadline is to make the CGP funds available to PHAs as early as possible in the FFY.

B. Appeals Based Upon "Unique" Circumstances and Error

Several commenters complained that HUD had very narrowly construed a PHA's right to appeal its formula allocation on the basis of unique circumstances. They maintained that by requiring PHAs to specify "the way in which it is different from all other PHA's" participating in the formula-funded modernization program, HUD had virtually closed off any opportunity for a PHA to wage a successful appeal based upon unique circumstances. They also contended that the term "unique" could have been construed more broadly by HUD to mean, "unlike, unequal, or unusual."

After considering all of these comments, the Department has decided to retain its proposed standard for sustaining an appeal based upon "unique circumstances." HUD notes that an appeal based upon unique circumstances does not require the PHA to prove that the formula is in error; rather, it requires that the PHA be able to establish that there is something so uncommon at this particular PHA that the formula, by its nature, could not have addressed it.

However, HUD cannot make a determination based upon the numerous scenarios posed by commenters as to whether unique circumstances would, indeed, exist in a given situation so as to justify increasing a PHA's formula allocation and decreasing the formula allocations of all other PHAs. A PHA which believes that it has conditions which make it unique should submit an appeal as prescribed in the regulation, stating how it is different from all other PHAs participating in the CGP.

A commenter urged that the appeals process for unique circumstances be extended from 30 days to 90 days, following the initial notification of a PHA's formula allocation. Another commenter asserted that PHAs should have a least 60 days to appeal their formula allocation, irrespective of the basis for the appeal. The Department agrees that more time is necessary for an appeal based on unique circumstances, and has extended from 30 to 60 days the period for this appeal. Any adjustments resulting from unique circumstances will be made in the following FFY.

However, the Department believes that 30 days is adequate for a PHA to identify an error and submit an appeal. Appeals will be reviewed at the Field Office level and forwarded to the Regional Office with a recommendation for approval or disapproval. The Regional Office will render the final decision on the approval or disapproval of appeals. Hence, HUD is providing that it will inform a PHA within 60 days of its receipt of a request for an appeal of a PHAs estimated formula amount as to whether the appeal can be resolved so that adjustments can be made to the formula in the current FFY. If HUD determines that there are no issues in dispute, a decision on the appeal will be issued at the earliest possible time but no later than 60 days from the date of the PHA's appeal request. Any adjustments resulting from a successful appeal would be made to the current year's allocation of funds from the CGP.

Alternatively, if HUD determines that there are issues in dispute, HUD will notify the PHA within 60 days of the date of its receipt of the appeal request that it will have to extend its review period. In this case, or in the case of a PHA appeal of its final formula amount, any adjustments resulting from a successful appeal based on error will be made to the following year's allocation of funds for the CGP.

C. Reduced Formula Allocation for PHAs Designated as Mod Troubled Under PHMAP

A number of commenters objected to HUD's proposed method under the PHMAP rule for designating PHAs as mod troubled agencies. Many asserted that the number of criteria to be used to establish mod troubled status under PHMAP were excessive, while others maintained that there was an inconsistency between the criteria to be used to establish mod troubled status and those to be used to remove the designation. While the Department has considered and taken into account all of these comments on the PHMAP, it believes that these comments should more properly be addressed in the separate PHMAP rule. HUD will only address in this final rule those PHMAP comments which directly relate to the CGP. The reader is therefore advised to refer to the interim PHMAP rule for a full discussion of the PHMAP issues raised in this rulemaking.

A commenter urged HUD to expedite the release of each year's mod funds by competing well before the beginning of the FFY the determination as to whether a PHA is initially designated as mod troubled under PHMAP. The commenter also asked that HUD's review of a PHA's status with respect to whether it continues to be "troubled with respect

to the modernization program" be completed no later than 90 days before the beginning of the FFY, so as to provide PHAs with adequate time to appeal. Finally, the commenter requested that mod-troubled PHAs be notified early in the year as to the amounts of funding they will receive, so they can submit annual statements on the same schedule as other PHAs.

The Department recognizes the validity of many of these comments but notes, initially, that HUD's Appropriation for the 1992 Fiscal Year eliminates the distinction which previously existed between PHAs which are initially designated as mod troubled under PHMAP, and those which are subsequently so designated. Moreover, as discussed above, HUD does not intend to designate PHAs as mod troubled in FFY 1992. Such designations and resulting formula reductions will not be implemented until FFY 1993.

Additionally, each PHA will know at the time it develops its annual statement whether or not it is designated mod troubled, based on its most recent management assessment. All PHAs will submit annual statements on the same schedule. The Department notes, however, that it may still condition a PHA's annual grant based upon its prior performance under the CIAP and, if the deficiencies noted by HUD are not corrected within a specified period of time, HUD may withhold a PHA's grant, in accordance with section 14(e)(4)(D) of the Act.

Nevertheless, in response to the commenter's concern, HUD intends to notify mod troubled PHAs as early as possible in FFY 1993, and in each succeeding year, of their tentative formula allocations.

One commenter recommended that HUD adopt a technical assistance approach for PHA's which have failed to perform, rather than withhold their modernization grant funds. The Department does intend to provide technical assistance to PHAs with respect to their MOAs. However, HUD is statutorily required to withhold a certain portion of CGP modernization funds from a PHA that is designated as mod troubled under PHMAP. In addition, all PHAs are authorized to use CGP funds for the purpose of obtaining technical assistance with respect to their modernization programs.

A PHA organization objected to provision in the April 1991 proposed rule which stated that HUD would reallocate funding withheld from mod troubled PHAs to PHAs which have not been determined to be either troubled or mod troubled under PHMAP, as well as to IHAs which have been determined to be administratively capable. This commenter asserted that since the NAHA does not restrict troubled PHAs from receiving reallocated funds, HUD's proposed language exceeds the statute and must be removed.

The Department is not persuaded by these comments, since HUD believes that it has the administrative discretion under section 14(k)(6) of the Act to restrict troubled PHAs from receiving reallocated funds. Moreover, HUD believes that its decision to limit the receipt of CGP reallocated funds to PHAs and IHAs which have been determined to have a satisfactory level of management performance will serve as an incentive for well managed PHAs.

The Department was asked by one commenter to revise the language concerning the treatment of credits which exceed the five percent reserve. This commenter asked that the language be clarified by stating that the PHA remains entitled to receive its remaining balance of credits in future FFY, including any credit not actually received because of a pro rata reduction. HUD agrees with this suggestion, and has made the necessary modifications in this final rule.

Two commenters objected to the proposed four-year "step program," in which a PHA would be able to get no more than 10 percent of its credits in the first year. The commenters maintained that such an approach is too slow, especially in light of the urgency of the PHA's modernization needs which would be accumulating during the period in which funds are withheld. They maintained further that when a PHA has been designated as mod troubled, HUD should negotiate with the PHA for a change in the PHA's five year action plan so as to increase as rapidly as possible the PHA's receipt of its credits. At a minimum, the commenters contended, HUD should provide the PHA with an opportunity to appeal the proposed new distribution scheme.

The Department wants to emphasize that the four-year step program, in which a PHA would be able to get 10 percent of its credits in the first year, serves only as a general guideline, rather than as an absolute standard. Nevertheless, HUD intends to consult with formerly mod troubled PHAs to determine the schedule of credit repayment in order to step up mod activities. This change is reflected in this final rule.

Numerous commenters objected strenuously to HUD's proposal to withhold all funds (with certain limited exceptions) from PHAs that are subsequently designated as mod troubled under PHMAP. Similarly, the commenters objected to HUD's proposal to disqualify such PHAs from obtaining credits for amounts previously withheld. The commenters urged HUD to treat PHAs that are subsequently designated as mod troubled under PHMAP in a manner similar to those that are initially so designated.

As discussed above, HUD's FFY 1992 Appropriations Act expressly eliminated section 14(k)(5)(E) of the Act, which served as the authority for HUD to promulgate special rules with respect to PHAs subsequently designated as mod troubled under PHMAP. Accordingly, the Department has eliminated the provisions of the proposed rule which established different requirements for such PHAs. In this final rule, all PHAs which are designated as mod troubled under PHMAP will be treated in the same manner, pursuant to the method set forth in the April 1991 proposed rule.

A housing authority asked HUD to clarify in the final rule how much funding can be given to "troubled" PHAs versus "mod-troubled" PHAs. Another commenter stated that troubled PHAs should be given a "clean slate" before they are required to meet the "stringent" performance standards established under PHMAP. Alternatively, the commenter urged HUD to establish a separate set of criteria especially for troubled PHAs. The commenter added that PHAs operating under a MOA should be excluded from the CGP requirements until they meet the PHMAP standards, and should be able to submit an action plan which is graded on a pass/fail manner so that the PHA is able to receive all of its grant. The Department wants to clarify that there is no automatic statutory reduction in funding for a troubled PHA. The authority to reduce funding applies only to mod troubled PHAs, although HUD has the authority to withhold grant funds from any PHA based upon program performance, in accordance with § 968.345 of this final rule. In addition, the statute does not exclude from the CGP those PHAs which meet the unit threshold requirements but which do not meet the PHMAP standards. In fact, such PHAs may use CGP funds to help them make the improvements or corrections which are needed to attain the PHMAP standards.

Another commenter asserted that whenever a PHA is determined to be mod troubled, HUD should notify development residents so that they can be apprised of the impact of a mod troubled designation, particularly with respect to withheld modernization funds. The Department agrees that

residents should be informed of the estimated formula amount to be provided to the PHA, including any potential reduction in this amount due to the PHA's designation as a mod troubled agency.

D. Appeal Based Upon Formula Reduction.

A couple of commenters urged that HUD, in evaluating a mod troubled PHA's appeal of its allocation amount, consider factors other than a PHA's progress in meeting goals and targets set forth in its MOA under PHMAP. These commenters maintained that there are a variety of other factors which HUD should also consider as a basis for an appeal, including factors related to the PHA's mod need and the capability of its staff to effectively carry out the modernization work.

The Department can appreciate these concerns but notes that at the present time it has decided to limit the bases upon which a PHA can appeal the reduction in its formula allocation, i.e., based upon the PHA's progress toward meeting the modernization indicator under PHMAP. However, if HUD decides at a later date that it wants to adopt additional factors for purposes of considering an appeal under this section, it shall do so after notice and comment rulemaking.

Comprehensive Plan (Including Action Plan) (§§ 905.672 and 968.320)

A. General

A commenter complained that there is some ambiguity concerning the word "binding," as it is used with respect to the comprehensive plan. On the one hand, the commenter states that PHAs are intended to be given maximum flexibility, according to the purposes of the Act. However, under the proposed rule, once HUD approves a comprehensive plan it is considered to be "binding" upon both HUD and the PHA. Thus, this language would appear to eliminate the very flexibility which the Act purports to promote. Consequently, this commenter asked that the term, "binding" be clearly defined in the final rule, and that its applicability be highly limited. The Department wants to clarify that, although the comprehensive plan is "binding" in nature, it nevertheless is subject to modification at any time. Moreover, the action plan is binding only to the extent that funding by HUD is made available.

Other commenters asserted that the five-year action plan "duplicates much of the material from the comprehensive plan." These commenters also stated that the executive summary is too long and duplicative of the comprehensive plan, while the annual statement is "too inflexible." One commenter urged HUD to eliminate "unnecessary detail" from the comprehensive plans, and requested specifically that the detailed statement of proposed work and costs be required only for modernization activities which the PHA proposes to carry out within the first two years of the five-year action plan.

The Department believes that it has reduced significantly the level of detail required under the executive summary, needs assessments, action plan and annual statement. Moreover, it has increased the level of flexibility in the annual statement by providing PHAs with the option of submitting up to a two-year annual statement. For a further discussion of these changes, see the appropriate section headings under this preamble (e.g., needs assessment, action plan, annual statement, etc.)

B. Resident and Local Government Participation

One commenter which supported the involvement of residents in planning and establishing priorities for a PHA's modernization program urged HUD to provide additional funding for PHA operating budgets so that PHAs can develop and implement resident training and employment programs designed to foster greater participation in mod activities.

HUD has clarified the description of eligible expenses under the CGP to specifically cover economic development activities, including job training and resident employment for the purpose of carrying out activities related to improvements under the CGP.

HUD agrees with the commenter that resident training is important, and encourages all PHAs to invest the maximum amount prudent in this endeavor. In addition, HUD wants to point out that PHAs are provided with operating subsidy in accordance with the formula established under the Performance Funding System (PFS). Any non-utility costs are subsidized through the PHA's Allowable Expense Level. PHAs are free to make their own decisions as to how to spend their available resources for eligible expenses, including resident training.

Two commenters asserted that, while they did not object to requiring significant resident participation in the annual update of the comprehensive plan, any hearings, participation and involvement should be limited solely to the new year being added to the plan, and to any major changes proposed for the other four years of the plan. The Department disagrees with this comment and believes that the five-year action plan and annual statement should be subject to resident review and comment every year.

A number of resident organizations urged HUD to "quantify and qualify" in the final rule the specific requirements for a PHA/resident partnership. They maintained that without such requirements, the rule would become a vehicle to empower PHAs at the expense of both residents and the broader community.

The Department agrees that further clarification of resident requirements is necessary, and is providing in this final rule that after a PHA is notified of its tentative formula allocation, it must notify residents that the physical and management needs assessments are about to begin; describe the process by which the PHA proposes to carry out these assessments, and for including residents in the process (including assisting the PHA in the prioritization of needs).

In addition, the PHA is required to hold one advance meeting, in addition to the statutorily required public hearing, so as to increase resident participation in the modernization process. Moreover, residents must be involved in the ongoing implementation and monitoring of the modernization program, and the PHA must set forth in its Executive Summary the proposed process for resident participation, and report on the results of that participation in its annual performance and evaluation report.

HUD received differing views concerning the type of notice which should be given to residents concerning any public hearing or meeting. One commenter stated that, rather than requiring the PHA to undertake reasonable efforts to provide advance notice to "each resident," HUD should instead state that "the PHA will make reasonable efforts to advise residents, including all elected representatives of a PHA-wide resident group, of the proposed meeting." However, one organization asserted that every resident should be given notice of such meetings or hearings, either by mail or by delivering the notice to an adult who answers the door.

The Department has decided to require PHAs to undertake reasonable efforts to provide written notice to all residents and resident groups of the advance meeting. The notice required under this section may be in the form of flyers or advertisements, although HUD is not prescribing the particular form of the written notice so that PHAs will have maximum discretion in

determining the method best suited to their own circumstances.

However, with respect to the statutorily required public hearing, HUD is requiring that the PHA undertake reasonable efforts to provide written notice to each resident of the date and time of the public hearing, and other pertinent information. In this case, the PHA must provide individual notices to its development residents, rather than a more generalized form of notice.

Three housing authorities asked HUD to adopt for the CGP the current CIAP rules governing resident meetings and comments, and consultation with local government officials. Another housing authority commented that HUD's proposed method of resident participation is unnecessarily cumbersome and would actually reduce effective participation as compared to CIAP rules. This commenter suggested that the pre-hearing meeting be eliminated; that the special elections requirement be removed; and that each resident and resident council be mailed a copy of the executive summary of the plan, with the notice of public hearing, and be advised that they may submit written comments as well as appear and speak at the hearing. Other commenters maintained that the public hearing requirement is an unnecessary burden, costly both in terms of time and money, and should be eliminated.

Two other commenters objected to HUD's attempt to specify the method of resident involvement, claiming that in many PHAs there are no PHA-wide resident groups. These commenters pointed out that, in other PHAs, there are both PHA-wide resident organizations and individual development resident organizations specializing in different types of activities. These commenters maintained that the PHA should be able to adopt the method of resident involvement which it believes to be most appropriate for its particular circumstances.

The Department appreciates many of these concerns, at the same time that it strongly supports resident involvement as a critical and integral part of the CGP modernization process. Initially, though, HUD wants to point out that the CGP public hearing is required by statute and HUD has no authority to waive this requirement. As discussed above, HUD is persuaded that PHAs must be able to work with existing, democratically elected resident groups, rather than being required to establish entirely new entities as a pre-condition for participation in the CGP. Hence, HUD has eliminated the requirement that a PHA must establish a PHA-wide resident group; instead, the final rule now provides maximum flexibility and discretion to PHAs by permitting them to deal with a broad range of existing, democratically elected resident groups.

Nevertheless, the Department is continuing to prescribe the nature of the partnership process since HUD believes that this is a critical element of the CGP, which not only promotes resident participation in the modernization process but also fosters a system of checks and balances which enhances program accountability. Thus, the Department believes it is important to set realistic standards for what constitutes acceptable resident involvement in the CGP. These standards must be based upon an understanding of how the PHA and residents can work and plan together within a partnership framework. The partnership process established in the CGP provides that type of framework since, by its very design, it can insure that all partnership members always know the current status of the CGP.

A number of resident organizations asked that the final rule provide that capacity building and resident training be made easily accessible to insure meaningful resident participation in both the CGP planning process and the CGP itself. These commenters also urged that resident initiatives, such as homeowernship, resident management, economic development and anti-drug activity be included as eligible costs under the CGP. The Department agrees emphatically with this comment, since it is fully consistent with the notion of implementing a partnership process to insure PHA and resident participation in the development, implementation and monitoring of the CGP.

A municipality commented that HUD failed to provide guidance in the proposed rule concerning the incorporation into the annual plan of the local community's comments. The Department agrees with this comment and has included a requirement which states that the PHA must give full consideration to the comments and concerns not only of residents and local government officials, but also of other interested parties. Moreover, HUD is requiring a PHA to summarize in the executive summary comments received on the comprehensive plan.

Finally, HUD has revised the local government statement to include a certification by the chief executive officer (CEO) that the PHA developed the comprehensive plan in consultation with interested members of the community, in addition to residents and local government officials. In the case of a PHA with developments in multiple jurisdictions, the PHA may meet this requirement by consulting with an advisory group representative of all jurisdictions.

One commenter asked that PHAs be required to provide residents with copies of all relevant materials, including the draft or working copy of the plan, amendments or annual statement, in addition to the final plan, amendments, or statement. The Department agrees with this comment, and has decided to require PHAs to make available to residents, on-site, such as in the PHA development offices, where possible, all of the components of the comprehensive plan, including the needs assessments, action plan, annual statement, etc., rather than to overburden the PHA by requiring it to provide each resident with copies of these documents at its own expense.

The same commenter also asserted that the PHA should not be limited to considering only the comments of the residents of the affected developments. In particular, the comments of individuals on the waiting list should be solicited and considered, the commenter maintained, especially if the PHA plans to reduce the number of units, convert units into units of different bedroom sizes, or convert family units into elderly housing, etc. The Department notes that the comprehensive plan provides for input by "other interested parties," and not just residents of the covered developments. Hence, residents on a waiting list may comment on the proposed plan at the public hearing, and their comments must be given full consideration by the PHA and included in the Executive Summary portion of the plan. However, given the fact that the term "other interested parties" encompasses an indeterminable number of people, the PHA cannot be expected to provide notice to the members of this class. As a result, HUD is requiring a PHA to provide general notice (e.g., in the form of flyers, advertisements, etc.) to the community at large concerning the public hearing on the comprehensive plan, rather than individual notices.

One PHA proposed that, instead of requiring a state-wide meeting, HUD should permit meetings to be held in those communities in which residents reside, and only to the extent affordable. In addition, the PHA asked that such meetings, at the option of the housing authority, be conducted through the use of telephonic services.

The Department has decided that, where geographic constraints or other conditions (e.g., size of the PHA), limit the possibility that a single resident group can provide for meaningful

resident participation, an alternative form of participation may be developed (e.g., an area-wide resident group). Thus, it is not necessary that a PHA hold a PHA-wide or state-wide meeting, so long as residents, members of the resident group, local government officials and interested members of the community are given an adequate opportunity to participate in the public hearing and other meetings established under this final rule.

With respect to the commenter's second concern, HUD has decided not to permit meetings to be conducted by telephone, since the Department believes that this would greatly hamper the ability of residents to comprehend and contribute to the development of the comprehensive plan.

One commenter asked that the local political leadership be involved on an advisory basis in the CGP modernization process. However, a contrary view was expressed by two housing authorities which asserted that including the political element into public hearings would not serve any useful purpose other than to provide a platform for campaign and re-election rhetoric. These commenters stated that only by holding a public hearing in a non-governmental, non-political forum can residents have the kind of control over the CGP that the rule intends. Other commenters stated that the degree of local participation provided for in the proposed rule appeared to be excessive, and stated that a better method would be to include the comprehensive plan in the locality's comprehensive housing affordability strategy, or to simply invite the local government to provide input at the level it deems to be appropriate. Another commenter stated that only work items which involve new construction or demolition should be brought to the community-at-large during a public hearing.

The Department wants to point out that the participation of local government officials in the development of the comprehensive plan is statutorily mandated. Hence, HUD does not have the administrative discretion to eliminate this requirement. In addition, the Department strongly favors a public hearing and democratic process wherein an informed community is involved in the decision making process within a partnership framework. Thus, HUD has retained without modification the provisions of the rule governing local government participation.

A housing authority commented that the rule should clarify that local government approval is limited strictly to sign-off by the CEO (e.g., the mayor) or his or her designee, and that approval by the city council or other legislative body is not required. The Department agrees that the local government certification need only be signed by the CEO (or his or her designee) of the unit of local government in which the PHA is located. Hence, it is not statutorily required (nor is HUD requiring) that the local government statement also be approved by a legislative body. However, HUD notes that, to the extent a PHA has developments in more than one unit of general local government, it is required to submit a certification from the CEO of each such governmental entity. Finally, for purposes of clarity, the Department has included in this final rule a definition of the term "chief executive officer of a unit of general local government"(CEO).

Two housing authorities stated that HUD's reference to local government approval of the CGP was an undue expansion of the statute and should be withdrawn. The Department disagrees with this comment, since section 14(e)(1)(E)(1) of the Act prescribes explicitly that a PHA must include in its comprehensive plan a statement signed by the chief local government official concerning, among other things, compliance by the PHA with the public participation requirements. In addition, the CEO must certify that the PHA's proposed comprehensive plan is consistent with the locality's assessment of its lower income housing needs. HUD has construed this latter provision to mean that the comprehensive plan must be consistent with the locality's Comprehensive Housing Assistance Strategy (CHAS), if applicable.

C. Executive Summary

A number of commenters asserted that the executive summary, as proposed by HUD, was too long and needed to be abbreviated significantly. In particular, several commenters asked HUD to remove the reference to "high need developments," claiming that there was no need to establish different requirements with respect to high need developments. Other commenters questioned the criteria proposed by HUD to determine whether a development is a "high need development."

The Department wants to clarify that the purpose of the Executive Summary is to promote understanding of the comprehensive plan by residents, local government officials, and the public. Consequently, while HUD has reduced the paperwork submission requirements under the Executive Summary, it has attempted to retain those features of the Executive Summary which are needed to carry out this purpose. The Department has, however, removed in this final rule all references to a separate category of "high needs" developments. In addition, HUD has further abbreviated the Executive Summary by limiting it to the following items:

(1) A summary of total preliminary estimated costs for the physical needs of each development, as well as for PHA-wide management and operations needs;

(2) A PHA statement concerning its overall modernization strategy, and its rationale for the approach and priorities adopted in the plan;

(3) A statement by the PHA of its plans for development(s) currently funded for comprehensive modernization under the CIAP; and

(4) A narrative description of the PHA's proposed process for maximizing the level of participation by residents in planning, implementing and monitoring of the plan, accompanied by a summary of the general issues raised on the plan by residents and others during the public comment period process, and the PHA's response to the general issues.

Another commenter asked HUD to clarify that the executive summary should summarize the resident concerns, and not just those which are addressed in the plan. The Department believes that the PHA must summarize those comments that are related to the modernization of the PHA's developments.

D. Physical and management needs assessments.

Several housing authorities argued that the requirement that a PHA must provide a physical needs assessment of all of its development is an unnecessary expense. A PHA organization stated further that HUD is requiring "an excessive amount of detail" in comprehensive plans, especially for needs that are unlikely to be addressed within the next two or three years.

The commenter proposed an alternative approach for the needs assessment in which a PHA's mod strategy would start out with a general (not detailed) assessment of the mod needs of its various buildings. Thereafter, the PHA would use this information to establish general priorities among its modernization needs at these various developments. The PHA would then develop a timeframe for the modernization of the various buildings, indicating which of those buildings would be modernized within the next two, three-to-five, and five-to-ten year periods. The PHA could authorize the preparation of detailed

mod plans for the developments which are scheduled to be modernized in the next two years, while authorizing the preparation of preliminary evaluations and analyses for developments scheduled for modernization within three to five years.

The Department agrees to reduce significantly the level of detail required in the physical needs assessment under the comprehensive plan. As provided in this final rule, a PHA would need to submit the following information in its physical needs assessment with respect to each of its developments:

(1) A brief summary of the physical improvements necessary to bring each of a PHA's developments to a level at least equal to the modernization and energy conservation standards, with the relative urgency of need indicated;

(2) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(3) A preliminary estimate of the cost to complete the physical work;

(4) The projected FFY in which the PHA anticipates that each development will meet the modernization and energy conservation standards;

(5) Any physical disparities between buildings occupied predominantly by one racial or ethnic group and buildings occupied predominantly by other racial or ethnic groups and, in such cases, the physical improvements required to correct the conditions;

(6) With respect to vacant or non-homebuyer-occupied Turnkey III units, the estimated number of units that the PHA is proposing for substantial rehabilitation and subsequent sale; and

(7) The sources from which the PHA derived the data used to develop the physical needs assessment, viability assessment and reasonable cost.

Thus, HUD has eliminated the requirement that a PHA use Form HUD–52827 to identify the needs of each of its developments, and is providing instead that physical needs may be described in broad categories, e.g., kitchens, electrical systems, with the relative urgency of need indicated.

Other commenters objected to the requirement that the PHA must submit detailed cost estimates as part of its comprehensive plan, arguing that most PHAs will not have prepared detailed mod plans for their developments at the time they submit their comprehensive plan to HUD. These commenters asked that detailed cost estimates be developed, instead, at the end of the mod planning process, not at the beginning. The Department agrees with these commenters and, as noted above, is providing only for a total gross cost estimate for each development.

One housing authority maintained that since the CGP is intended to be a capital improvement program, PHAs should not be required to submit comprehensive physical and management needs assessments for each development in the plan, but rather should be asked to justify the work being proposed. The Department has not adopted this suggestion, since the requirement that a PHA submit a comprehensive assessment of its physical and management needs on a development-by-development basis is mandated by statute and cannot be modified by HUD.

Two commenters asked HUD to revise the language in the rule which states that the physical needs assessment identifies all of the work that a PHA must undertake to bring its developments up to the mod and energy conservation standards. Instead, these commenters asked that this language be revised to reflect the conditional nature of a PHA's obligation to meet such standards, depending upon whether HUD provides adequate funding. Consequently, they urged HUD to revise this provision to state specifically, "subject to the availability of funding." HUD has not adopted this comment, since the mandatory needs assessment is not subject to the availability of funding, but rather is intended to identify all physical and management deficiencies within a PHA's developments or PHA-wide.

Several commenters objected to the requirement for a cost certification by an architect or engineer in the case of high needs developments, claiming that architects and engineers are being taxed with increasing liability lawsuits and, in most cases, are unwilling to "certify" the very rough estimates of mod work items that will be available at the time a PHA prepares its comprehensive plan. The Department notes that, since it has eliminated the separate category of "high needs developments," this issue is now moot.

One commenter indicated that some PHAs may wish to include in their action plans some of their newly accruing needs, even though they will not be able to specify precisely which of these actions will be taken. By including them in the plan in general terms, the commenter stated, PHAs will be able to set aside some funding to meet these newly accruing needs on an on-going basis. As a result, this commenter recommended that the comprehensive plan may include a very general estimate of additional broad categories of modernization needs that can reasonably be expected to occur due to normal aging and deterioration of the stock over the ensuing five year period. The Department agrees that this is required pursuant to the authority under section 14(e)(1)(A)(iii), and notes that such a provision was included in the April 1991 proposed rule [see § 968.320(c)(2)(i)(B) at 56 FR 19488), and is being retained without modification in this final rule.

A housing authority objected to the proposed provision which requires a PHA to specify whether its substandard developments are predominantly occupied by a particular racial group, claiming that such an admission might be grounds for litigation on the basis of civil rights violations. Instead, the housing authority maintained that the building condition analysis based on ethnic or racial occupancy should be based upon an objective standard, e.g. whether the units meet HQS. In addition, the PHA stated that the reference to "significantly worse condition" should be removed from the rule, since it is a highly subjective judgment and is not further defined in the regulation.

HUD has not adopted this comment, since the Secretary has determined that such a comparative analysis of racial and ethnic data is necessary to enable the Department to fulfill its responsibilities pursuant to sections 808(e)(6) and 808(a) of the Fair Housing Act. Nevertheless, HUD has removed the reference to "significantly worse conditions," and has provided instead that the PHA must specify whether there are any physical disparities between buildings occupied predominantly by one racial or ethnic group and buildings occupied predominantly by other racial or ethnic groups and, in such cases, the physical improvements that are necessary to correct those conditions. The Department wants to clarify that this requirement does not apply to IHAs organized under tribal law, and only applies to IHAs organized under state law which have been determined on a case-by-case basis to be subject to Title VI of the Civil Rights Act of 1964, and title VIII of the Civil Rights Act of 1968.

A number of commenters asserted that HUD interpreted the "management improvement" requirements of the 1987 Act in the broadest possible manner, so as to increase its control over PHA management activities. Several of these commenters maintained that any detailed management improvement strategies should flow out of the PHMAP program, and need not be repeated and incorporated in the CGP comprehensive

plan. They asked that PHAs be permitted to refer in their comprehensive plans to their PHMAP evaluations, in addition to any corrective actions agreed to by the PHA. The commenter also asked that the PHA be required to include in the comprehensive plan only those management improvements (if any) which are proposed for funding under the CGP modernization program. In addition, they asked that PHAs only be required to provide substantial details in the comprehensive plan for those management improvement actions which the PHA plans to carry out in the near future (e.g., with the next two years) using modernization funds. These commenters maintained that HUD's attempt to approve all of a PHA's modernization and operational activities in advance is directly contrary to the clearly stated purposes of the 1987 Act.

The Department agrees that the statutorily mandated management needs assessment should be simplified and has made a significant number of changes. This needs assessment now consists of the following components (with the relative urgency of need indicated):

(1) An identification of a PHA's management and operations needs for each of the statutory areas prescribed by section 14(e)(1)(B), in addition to areas prescribed by HUD in the regulation. To the extent that any of these needs is addressed in a HUD-approved MOA or IP (applicable to a PHA) or MIP (applicable to an IHA), the PHA may simply include a cross-reference to these documents;

(2) Any additional deficiencies identified through PHMAP, audits, and HUD monitoring reviews, and which are not otherwise addressed in paragraph (1). To the extent that any of these needs is addressed in a HUD-approved MOA or IP/MIP, the PHA may simply include a cross-reference to these documents;

(3) Any other management and operations needs which the PHA wants to address at the PHA-wide or development level;

(4) A PHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds; and

(5) An identification of the sources from which the PHA derived its data for the management needs assessment.

In this manner, HUD has greatly simplified the management needs assessment by permitting a cross-reference to a HUD-approved MOA or IP/MIP for PHAs which have deficiencies identified and which are operating under these documents. The PHA also would not be required to submit to HUD copies of its MOA or IP/MIP since these documents are already on file with the Department (although copies would need to be made available as part of the resident and local community participation process). A PHA which wants to carry out improvements not covered by a MOA or IP/MIP must identify those needs as part of the assessment. It should be noted, however, that needs identified by the PHA, or as a result of the resident and local government consultation process, must be added to the PHA's needs assessment.

One housing authority asserted that if HUD intends that grant-funded management improvements must be tied to specific needs identified in the five-year plan, then the Department should encourage explicitly a broader approach to the assessment of management needs than may be assumed from HUD's concentration on the correction of PHMAP fail grades (e.g., maintaining state-of-the-art capabilities).

HUD wants to clarify that a PHA may include in its comprehensive plan management needs other than those required to correct deficiencies identified under PHMAP, provided there is adequate justification. For example, a PHA which obtains a satisfactory rating under PHMAP may want to provide for improvements to raise its capability to a higher level of performance, and this certainly is permissible under the CGP.

A PHA organization recommended that HUD delete its proposed requirement of including the PHA's score on all PHMAP factors, and suggested instead that only the scores for PHMAP factors which are to be addressed with CGP funds need to be included in the needs assessment, action plan and annual statement.

The Department wants to clarify that, while a PHA is not required to indicate its PHMAP score in its needs assessment, it must list all management deficiencies identified under PHMAP, irrespective of the source of funding to be used to correct those deficiencies. Moreover, HUD is permitting in this final rule that a PHA with management deficiencies identified under PHMAP may simply cross-reference to those deficiencies in its CGP comprehensive plan. In the action plan and annual statement, a PHA is only required to list those PHMAP-related deficiencies which it intends to address with CGP funds.

E. Physical and Social Viability

A number of commenters contended that all of the procedures for establishing modernization cost reasonableness and viability should have been included in the proposed rule for public comment. These commenters asserted that HUD should not now adopt such procedures without going through notice-and-comment rulemaking procedures. The department believes that it was justified in providing the basic standards for physical and social viability in the proposed rule, even though it intended to elaborate upon those standards in the HUD Handbook for the CGP.

In addition, a couple of commenters maintained that since many PHAs will be proposing on-going rather than comprehensive modernization in their action plans, it is unreasonable to require that these limited numbers of on-going modernization improvements "ensure the long-term viability" of that development. They contended that HUD is carrying over from the CIAP an obsolete approach to viability which needs to be changed in light of the changed modernization approaches that will be taken by PHAs under the CGP. One commenter recommended specifically that PHAs be allowed to present a variety of arguments concerning factors they believe relate to a development's viability, not just a cost factor.

Another commenter stated that the proposed rule was unclear as to the timing and measurement of viability. To avoid any "possible conflict," this commenter recommended that repeat viability reviews of properties be abandoned after 25 percent of the total estimated mod costs have been expended on the units. Meanwhile, another commenter maintained that the viability reviews should be eliminated altogether, claiming that it is a "fruitless exercise which yields meaningless information."

A number of commenters stated that the concept of a "total project cost" is no longer an appropriate concept for evaluating the reasonableness of a PHA's modernization expenditures. They contended that, under the revised mod program, a PHA will no longer be required to carry out its mod activities solely in terms of a "comprehensive modernization project" which would have a corresponding "total project cost." Instead, they claim that most PHAs probably will propose a variety of ongoing mod activities rather than "comp mod projects," for which there is no "total project cost" that can be compared to the "total development cost" concept used under the development program.

Other commenters objected to HUD's proposal to use the total cost of all the activities which the PHA believes would

be required to correct all of the physical and management defects in the comprehensive assessments, as the basis of cost reasonableness. They maintained that this approach is unrealistic, since the sum of all these costs would be a highly hypothetical figure and would not serve as a good basis for estimating the real modernization expenditures a PHA is likely to make at a particular housing development. As an alternative, the commenters recommended that the rule provide PHAs with the option of deciding whether to choose a comprehensive approach to modernization or piecemeal modernization, depending upon which strategy it believes to be most appropriate.

In the case of ongoing modernization, the commenters maintained that cost reasonableness and viability could not be evaluated in terms of the costs of a hypothetical comp mod development, but should be based upon unit costs of the major categories of modernization work proposed to be undertaken by the PHA. Under this approach, HUD would evaluate whether or not a particular cost component, e.g., a completely renovated kitchen, is reasonable, while reviewing these components using widely available private market cost indices for general, not highly detailed, categories of improvements proposed by the PHA.

Another commenter asked that the definition of "reasonable cost" be revised to include certain soft costs (e.g., relocation costs). Moreover, because of the significant cost of lead-based paint abatement and section 504 accessibility modifications, this commenter recommended that the test for viability be reexamined and revised, so that these costs are excluded from the total mod cost when compared to a percent of total development cost (TDC).

A couple of commenters stated that the definition of "reasonable cost" establishes a ratio of modernization costs to TDC (i.e., 62.5% and 69%), which are carry overs from the CIAP. Not only were these figures never adequately justified in the CIAP, the commenters maintained, but they also appeared to be inconsistent with HUD's definition of "high needs development." The commenters urged that costs higher than 62.5% and 69% should automatically be approvable.

The Department agrees that the current viability test under CIAP, including financial feasibility, is difficult to apply to the CGP since there is no requirement for a comprehensive approach to modernization. However, section 14(e)(1)(C) of the Act does require that improvements "will reasonably ensure the long-term physical and social viability of each project at a reasonable cost." Therefore, the Department has adopted a new and more workable approach to "reasonable cost," which is a HUD review standard required under the statute. The Department is requiring the PHA to estimate the total hard costs of meeting the modernization and energy conservation standards for each development in its inventory at the time it prepares its physical needs assessment. If the total preliminary estimated hard costs for a development are at or below 90% of the computed TDC limit for a new development, and the PHA determines that, upon completion of the improvements and replacements, the development can reasonably be expected to be viable, i.e., to be structurally sound and achieve full occupancy, the PHA shall determine the development to be viable at a reasonable cost, and so state in the plan.

Where the total preliminary estimate of hard costs exceeds 90% of the computed TDC limit for a new development, but the PHA nevertheless wants to modernize the development, the PHA shall complete and submit to HUD with its plan a viability analysis of the development, as prescribed by HUD, which demonstrates that, upon completion of the improvements and replacements identified as needed for the development, the development can reasonably be expected to be structurally sound and achieve full occupancy. The PHA shall also submit to HUD a request to exceed 90 percent of TDC in modernization hard costs for the development. HUD will review such requests on a case-by-case basis, in accordance with criteria set forth in the final rule.

Where a PHA's analysis determines that a development cannot be made viable at a reasonable cost, the PHA shall not expend CGP funds, except for emergencies, at that development. The plan must indicate what action the PHA proposes to take with respect to the development, such as demolition or disposition.

F. Action Plan

A commenter pointed out that if HUD is proposing to restrict the comprehensive plan and the action plan to only those improvements which are eligible under the CGP, it needs to clarify the regulatory language under these sections. The Department concurs with this comment, and has included clarifying language in this final rule.

A couple of commenters objected to HUD's statement in the proposed rule that the comprehensive plan is not linked to the availability of funds. These commenters stated that, while this statement might be true with respect to the needs assessments, it is not true with respect to the action plan, which is also a part of the comprehensive plan. They contended that the action plan was clearly intended by Congress to be a realistic statement of what the PHA actually proposes to do, given the likely availability of funding over that time period. The Department agrees that the action plan, but not the needs assessment, is linked to the availability of funds.

A number of commenters asserted that, even though HUD acknowledged in its October 1988 proposed rule that it had erroneously referred to a "comprehensive modernization project," the proposed rule still seemed to imply the notion of a comprehensive project, i.e., one in which a five-year period can at least come close to meeting all of HUD's standards and requirements. These commenters stated that such a notion will not be possible for most PHAs, and asked that the five-year action plan include only those actions which the PHAs can feasibly include within the five-year period covered by the plan, based upon the funding likely to become available during that period. Another commenter also asserted that the rule should state that all deficiencies may not be addressed within the initial 5-year plan and allow for indication by the PHA of its unfunded need at the end of the 5-year plan.

The Department notes that the language regarding the action plan has been revised to reflect that it shall include how to address the deficiencies (or a portion of the deficiencies) identified under its management and physical needs assessments. Also, the requirement for updating the comprehensive plan every six years implies that all deficiencies may not be addressed during the initial five years. Although there are no specific provisions for a PHA to identify its unfunded needs at the end of five years, the update of the comprehensive plan will accomplish this end since it will eliminate needs funded in previous years, and will add new needs which have arisen in that time.

The Department also wants to point out that, in order to develop its action plan and establish priorities, a PHA must make a determination regarding the strategy for all of its developments. Where there are extensive needs which may be difficult to address in the near future with the annual CGP allocation, PHAs are encouraged to seek other sources of funding. PHAs may not,

however, reference other funds as a means for taking corrective action unless there is a reasonable expectation that such funds will be forthcoming, e.g., the City has provided CDBG funds in the past and expects to continue such funding. If there is no reasonable expectation of other funds, the PHA must address its corrective actions within the confines of its expected CGP funding.

Some commenters complained that the five-year action plan duplicates much of the material from the comprehensive plan, while two commenters specifically urged HUD to delete the requirement for "hypothetical data," e.g., "the length of time, target date and the cost needed to upgrade each development to the mod standards * * *"

In this final rule, the Department has reduced substantially the amount of detail required in the action plan. For example, with respect to physical improvements, the PHA must now indicate in the action plan the work to be undertaken by the PHA in major work categories (e.g., kitchens, electrical systems, etc.); establish priorities among the major work categories by development and year, based upon the relative urgency of need; and estimate the cost of each of the identified major work categories.

Insofar as management improvements are concerned, the PHA must now identify how it intends to address the deficiencies (or a portion thereof) identified in the management needs assessment, including work identified and cross-referenced through PHMAP (or, for IHAs, the ACA), audits and HUD monitoring findings; and provides a preliminary PHA-wide cost estimate by major work category. These changes to the action plan should eliminate any duplication, and reduce significantly the paperwork burden associated with the action plan.

G. Amendments to the Comprehensive Plan

Two commenters asserted it was the intent of the 1987 Act that, once a comprehensive plan is completed by a PHA, it would remain a reasonably stable document, acting as a general guide for a PHA's mod activities over a five-year period. These commenters contended further that any major revisions to the comprehensive plan should be incorporated at the end of the five-year period, so that while a PHA might propose changes to its comprehensive plan during the five-year period, HUD should not require it to do so, but should itself be bound to the provisions of the approved comprehensive plan. Thus, HUD's implementation of management changes via PHMAP should not require changes to a PHA's comprehensive plan, except when it proposes as part of the normal annual update of the comprehensive plan to change the management improvement activities which will be funded with modernization funds.

The Department does not agree that the approved comprehensive plan is a static document which may not be modified or revised within the five-year period since, clearly, there are events which may occur which can affect the comprehensive plan, including a significant change in the PHA's physical and modernization needs, or in the PHA's proposed strategy for addressing those needs. Although the plan is binding, the statute contemplates amendments to the plan, and HUD is providing for such amendments in the case of major changes to the annual statement, annual updates of the rolling base five-year action plan, and the on-going identification of deficiencies under PHMAP. HUD further believes that a dynamic comprehensive plan will serve as a more useful planning tool than a static document.

A commenter objected to the proposed requirement that all amendments to a PHA's comprehensive plan must be accompanied by the certification and PHA resolution required for the initial submission of the plan. This commenter maintained that there should be a threshold which establishes when an amendment will require HUD approval, such as an amendment that would significantly change the scope of the action plan by adding the equivalent of new items. Only in such cases, argues the commenter, should the PHA be required to submit an additional resolution.

The Department disagrees with this comment since it believes that an amendment to the comprehensive plan, constituting a major change to the approved annual statement (the first year of the action plan) or otherwise amending portions of the plan, must be accompanied by the same certifications and resolutions as an original submission. This is especially true for purposes of ensuring adequate opportunity for resident participation on amendments to the comprehensive plan. It should be noted that a PHA which wants to use modernization funds for new activities under the action plan, which were not included in the needs assessment, must also submit an amendment to its needs assessments, as well as its action plan. Although amendments to the needs assessments may be submitted at any time, they must be submitted at least once every sixth year.

H. Local Government Statement

A commenter asserted that the rule should remove the requirement that a comprehensive plan must be consistent with a locality's Comprehensive Housing Assistance Strategy (CHAS). For most communities, the commenter stated, the CHAS will include only limited statements concerning public housing modernization needs, and will not include the PHA's comprehensive plan. The requirement of consistency with the locality's assessment of its housing assistance needs is statutory and cannot be waived by HUD.

The CHAS regulation requires "a description of the number of public housing units in the jurisdiction, their physical condition, and the restoration and revitalization needs of public housing projects within the jurisdiction. The strategy of the jurisdiction and the public housing agency for improving the management and operation of public housing projects and for improving the living environment of low- and very low-income families residing in public housing must be included." (See 24 CFR 91.15(i).) Thus, HUD expects the CHAS to include substantial information about public housing modernization needs and hopes that the PHA and local government will work closely together to identify and plan for these needs.

A housing authority recommended that HUD delete the requirement that the local government cooperate in providing resident programs and services, since the rule does not address HUD or PHA actions when the local government declines to provide the requested certifications. The Department has not adopted this suggestion, since this requirement is statutory. (See section 14(e)(l)(E)(ii) of the Act.) Thus, HUD may not approve a comprehensive plan which fails to contain the appropriate local government certification.

I. PHA resolution

A number of commenters asserted that the PHA certification which obligates a PHA to carry out all requirements (e.g., lead based paint, etc.) should be made conditional upon funding being received by the PHA to do these tasks.

HUD agrees that a PHA's certification to carry out certain required activities is conditional upon the PHA's receiving modernization funds from HUD. Nevertheless, the Department wants to point out that a PHA should also seek sources of funding in addition to CGP

funding to carry out its needed modernization work. Secondly, HUD is requiring that after a PHA addresses its emergency work items that it then respond to statutorily mandated activities, such as lead based paint testing and abatement. In this manner, the PHA will be assured that it can submit a certification indicating that it will comply with these statutorily mandated requirements.

A housing authority stated that the National Environmental Policy Act (NEPA) checklist seemed to be excessive for remodeling work, and asserted that a much lower standard of review is appropriate. Although HUD appreciates these concerns, the Department is statutorily responsible for determining NEPA compliance. HUD intends to pursue a statutory change to NEPA, which would permit PHAs to certify to NEPA compliance, similar to the procedure permitted for entitlement cities under the Community Development Block Grant program. However, until such legislation is enacted, the existing NEPA requirements must remain in effect.

A commenter noted that because the comprehensive occupancy plans (COPs) are expected to undergo major changes in the future, HUD should simply ask PHAs to refer in their comprehensive plans to their COPs, rather than to require that the COPs be incorporated directly into the comprehensive plan. The Department agrees with this comment, and is providing that PHAs may reference their COPs in their CGP comprehensive plan.

J. Extension of Time for Performance

A commenter objected to HUD's listing of only two possible bases for an extension of project implementation schedules, claiming that the list of reasons for such extensions should be greatly expanded and left generally to the judgment of the PHA. The commenter maintained that the 1987 Act intended that PHAs have this flexibility.

In order to preserve the integrity and accountability of the CGP modernization program, HUD has decided to retain the original bases for extending project implementation schedules. Nevertheless, HUD is providing pursuant to section 14(e)(3)(B) that a PHA shall have a right to amend its comprehensive plan and related statements to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the annual statement, or has not provided the assistance in a timely manner.

In addition, a PHA may revise the target dates for fund obligation and expenditure in the approved annual statement without prior HUD approval whenever any valid delay outside of the PHA's control occurs. In this latter situation, HUD will review the revisions and the PHA's justifications for those revisions during its end-of-the-year evaluation of the PHA's performance for purposes of determining whether the PHA's revisions were based on valid delays and, therefore, the PHA has a continuing capacity to carry out its comprehensive plan.

HUD Review and Approval of Comprehensive Plan (Including Action Plan) (§§ 905.675 and 968.325)

Two commenters argued that HUD has no statutory authority to propose a partial approval of the comprehensive plan. The commenters stated that this proposed provision attempts to "sidestep the statute" and attempts to "control PHAs at an excessive level of detail" since the 1987 Act provides specifically that if the plan is not approved by HUD within 75 days, it shall be deemed to be approved, and that HUD can only disapprove a comprehensive plan under certain circumstances.

In addition, several commenters maintained that the HUD approval process is unclear, and that criteria for disapproval are "foggy," as is the process for what happens when HUD disapproves a plan. The commenters also noted that the rule should specify the nature of a PHA's recourse if HUD disapproves the plan.

The Department notes initially that it concurs with the commenters' recommendations, and has removed the provision concerning partial approval of the comprehensive plan. In addition, this final rule attempts to clarify what constitutes disapproval of a comprehensive plan, what happens next, and the timeframe for getting the plan approved. Furthermore, HUD is providing that it has 75 calendar days in which to review the comprehensive plan, once it has been accepted by HUD for review. If HUD fails to disapprove the comprehensive plan by the 75th day, the plan will automatically be approved. However, if HUD notifies the PHA within the 75 day review period that it needs to make modifications to the plan, the PHA will need to submit the revised plan to HUD by a specified date. Failure to submit the revised plan by the specified deadline will result in that year's CGP funds being withheld and reallocated to PHAs in the subsequent FFY.

Another commenter stated that the proposed rule should specify the process by which a PHA can correct any deficiencies in the comprehensive plan which result in the plan being unapprovable. The Department agrees with this comment, and has clarified in this final rule the process for correcting deficiencies in the comprehensive plan.

Two housing authorities and two resident organizations commented that once a PHA grant program is approved and thresholds established, HUD's only role should be to review program progress and to provide requested technical assistance. The Department notes that with respect to monitoring, the statute mandates that at least annually HUD must carry out reviews necessary to determine if: (1) a PHA's mod work is timely and in accordance with the comprehensive plan; (2) the PHA has continuing capacity; and (3) the PHA is making satisfactory progress towards meeting the performance standards. Thus, HUD is responsible for ensuring that PHAs follow all applicable program requirements in implementing their comprehensive plans. HUD intends to implement this statutory mandate in monitoring the CGP.

Another commenter noted that the comprehensive plan should not be approved or binding if the requirements for tenant participation are not fully complied with. The Department concurs with this comment, since section 14 expressly requires that the resident participation requirement must be complied with before a PHA can have a "complete" (and, hence, approvable) plan.

Some commenters objected to HUD's statement in the proposed rule that it would disapprove a PHA's comprehensive plan "if the proposed work fails to address all management and operation areas that HUD has determined to be deficient," claiming that use of the word "all" sets too strict a standard. These commenters maintained that this provision should be qualified to state, "subject to the availability of funding being provided to the PHA." However, the Department has decided to retain this provision without modification since the requirement that a PHA specify all management and operations deficiencies in its comprehensive plan is statutory. Consequently, a PHA's failure to address all such deficiencies in its needs assessment is a basis for disapproval under the statute, and may not be modified.

Nevertheless, HUD recognizes that the action plan and annual statement are subject to the availability of funding, so that a PHA cannot be expected to address all physical and management deficienceis in its five-year action plan, when it lacks the funds to do so.

Annual Statement of Activities and Expenditures (§§ 905.678 and 968.330)

A housing authority commented that the proposed PHMAP program stresses repeatedly a PHA's compliance with "program implementation schedules." Consequently, this commenter asserted that HUD should more clearly delineate in the CGP exactly what those program implementation schedules consist of.

Another commenter urged HUD to limit its monitoring role under the rule, claiming that HUD should monitor a PHA's project implementation schedule by reviewing whether or not the work on developments has been completed within a reasonable time. The commenter cautioned HUD against attempting to specify precisely when the proposed mod work would actually begin, and without referring to a variety of intermediate deadlines.

HUD agrees with these comments, and has clarified that the annual statement must include estimated target dates for the obligation and expenditure of the current year's funds on a development by development basis. Under this formulation, PHAs will not be required to provide target dates on a work item basis, nor will they be required to establish any intermediate deadlines. For example, a PHA which proposes several work items at a development, e.g., windows, doors, roofs, etc., will provide a single target date for the obligation and expenditure of all funds at that development, rather than provide deadlines for the completion of each of the individual work items at that development.

The Department agrees with this recommendation and wants to clarify that the implementation schedule will apply to the annual statement for the obligation and expenditure of funds on a development basis. A PHA will be required to report in its end-of-year performance and evaluation report its progress against the target dates. In this final rule, HUD is also providing that it expects all of a PHA's current year CGP funds to be obligated within two years of the date such funds were provided to the PHA, and expended within three years of such date, unless longer time frames are approved by HUD. If a PHA fails to meet its approved deadlines and thereby fails to carry out its comprehensive plan in a timely manner, HUD may issue a notice of deficiency and request corrective action or may issue a corrective action order. If the PHA fails to take appropriate corrective action to obligate and expend the funds, as specified by HUD in a corrective action order, pursuant to the procedures established in this final rule, HUD may declare a breach of the grant agreement with respect to some or all of the PHA's functions so that the PHA or the modernization function may be administered by another entity; or HUD may withhold some or all of the PHA's annual grant.

Another housing authority objected to the language in the proposed rule which states that HUD promptly will notify a PHA that it has disapproved its annual statement, claiming that "prompt notification" is too vague and arbitrary a timeframe.

The Department notes that although it is unable to specify exactly when it will notify a PHA that its annual statement has been disapproved, it wants to reiterate that it will do so within the 75-day statutory deadline. A number of comments objected to the proposed requirement that any "major change" in a PHA's annual statement must be approved by HUD, since the definition of "major change" as involving more than 10 percent of a PHA's annual grant would mean that virtually any change would require HUD approval. One commenter proposed an alternative approach, namely that if a proposed mod activity is included in a PHA's HUD-approved action plan, the PHA should have the latitude to reschedule that item within its five-year framework without the need to obtain HUD approval. According to this view, the PHA should only be required to submit to HUD a statment explaining the nature of, and the reasons for, the change. Furthermore, only when a PHA adds items which previously were not contained in the comprehensive plan, or where a PHA completely abolishes such items, should the PHA be required to obtain HUD approval.

Another commenter asserted that HUD should not be concerned about variations in the annual statement from planned expenditures, so long as the Resident Advisory group agrees with the PHA's decision to vary these expenditures.

A third commenter suggested that HUD allow major changes of up to 20 percent without prior HUD approval, and prescribe a time period in the final rule for HUD approval of major changes.

Some commenters stated that the rule provided little flexibility with regard to permitting PHAs to shift funds from one year's mod developments to another, and requested that HUD expressly authorize PHAs to move such funds without HUD approval so long as the new mod activity was included in the original five-year plan.

A PHA organization complained that the proposed rule failed to implement the statutory goal of providing PHAs with greater flexibility in using mod funds, and mentioned specificially that HUD is placing too much emphasis on section 504-related activities. The commenter maintained that HUD must grant PHAs the flexibility to apply funds where they are most needed. This final rule provides PHAs with flexibility in establishing their funding priorities and in planning work to meet statutorily mandated deadlines, such as for section 504 and lead-based paint requirements.

The Department is providing in this final rule that in addition to the first year of funding, a PHA may, at its option, submit an annual statement in part or in toto for the second year of funding. If the PHA exercises this option, it may shift work items in the approved annual statement(s) between years 1 and 2. The PHA would still be required to submit a new annual statement each year. If a PHA elects to submit a two-year annual statement, all work items in the first two years would be interchangeable withour prior HUD approval.

In addition, major changes up to 10% of the annual grant would be permitted without HUD approval for any items in the five year plan (years 2 to 5) or, in the case of a two-year annual statement, years 3 to 5.

In order for the funds to be fungible, HUD would require that a PHA submit a detailed annual statement for both years covered by the statement. Thereafter, the PHA would be required to explain in its performance and evaluation report where it has deviated from the order of work presented in the annual statement. This will provide PHAs with flexibility for purposes of shifting funds over and above that provided with regard to major changes.

A PHA may review the target dates for fund obligation and expenditure in the approved annual statement without prior HUD approval whenever any valid delay outside the PHA's control occurs. Such revision is subject to postreview by HUD in determining whether the PHA has a continuing capacity to carry out its comprehensive plan in a timely manner. Revisions to target dates to reflect work shifted from year two to year one of the approved annual statement are permitted.

In addition, a PHA may revise its comprehensive plan and related statements whenever HUD does not provide the amount of assistance set forth in the plan or has not provided the assistance in a timely manner. Such revisions are not subject to post-review by HUD for purposes of determining whether the PHA has a continuing capacity to carry out the comprehensive plan.

A housing authority maintained that the proposed rule was unclear as to whether the 10 percent major change threshold applied to each annual grant, or to the aggregate of grants under the program. The Department wants to clarify that the 10 percent major change

threshold applies to each annual grant under the program.

Two commenters recommended that as soon as the President signs the appropriation bill for a particular FFY, PHAs should be notified of their probable funding amounts, so that they can begin to prepare their one-year annual statements. They contended that the advantages of expediting the release of mod funds outweigh the disadvantages of any last minute tinkering required when the precise formula allocations are known. The Department agrees that tentative estimates for planning are useful, and plans to notify PHAs of their estimated formula amounts as expeditiously as possible.

A housing authority asserted that the annual statement duplicates much of the material from the five-year action plan. However, after considering this comment, HUD notes that the annual statement does not duplicate material contained in the action plan since it is the first year of the action plan. The annual statement sets forth in much greater detail the actual work to be carried out using the year's annual grant. This detail is necessary for greater understanding by the residents, local government, the public and HUD as to what exactly the PHA intends to do with the annual grant. Hence, HUD has not revised the annual statement in response to this comment.

Another housing authority stated that the proposed requirement that any substitutions in the annual statement must be included in the five-year plan is an incentive to PHAs to include everything they possibly can from the physical needs assessment into the action plan. The commenter asserted that this approach compromises the supposed intent of identifying specific needs. HUD disagrees with this comment, since the action plan is necessarily restricted by the availability of funds.

Conduct of Modernization Activities (§§ 905.681 and 968.335)

A commenter objected to HUD's statement in the proposed rule that it would not permit a PHA to draw down funds from its estimated five-year allocation on an up-front basis. This commenter maintained that although the Department's decision was apparently premised upon 24 CFR 85.21(b), which requires HUD to ensure that its methods and procedures for payment to a grantee "minimize" the time elapsing between HUD's transfer of funds and the subsequent disbursement of those funds by the grantee, a reasonable interpretation of the word "minimize" does not necessarily mean "eliminate." Hence, the commenter asserted that a reasonable time elapsing between the transfer and disbursement of funds is consistent with the purposes of the Act and should be acceptable.

An IHA stated that it would support at least a 15 percent drawdown up front from the first year's approved allocation to facilitate timely vendor payments. However, other PHAs asserted that once the annual statement has been approved, the full amount of the PHA's annual funding level should be advanced to the PHA.

The Department cannot accept these comments because Treasury regulations (31 CFR part 205) require PHAs to disburse funds within 3 days of receipt. However, funds approved for the replacement reserve may be drawn down up front in order for the PHA to accrue and retain the interest earned for future work. Funding replacement reserves must generate a return equal to or greater than the average 91-day Treasury bill rate.

One commenter asserted that the proposed rule failed to set forth the procedures that HUD will use to distribute modernization funding under the program, and stated that the schedule and method of fund requisitioning and disbursement was a significant matter which should have been included in the rule. Another commenter asserted that if HUD adopts a disbursement method which does not supply funding from a PHA's annual formula grant until it submits documentation to HUD that it is ready to expend such funds, this would substantially subvert the purposes and intent of the 1987 Act that PHAs receive their funds in a timely, expedited and uncomplicated way. The commenter maintained that it would also rule out HUD's providing funds to a PHA for a mod reserve account for purposes of expenditure in future years, as reflected in the approved comprehensive plan.

Three commenters pointed out that the current "Rapid Payment System" is not expeditious, and requires a substantial amount of time by the PHA to supply necessary paperwork to HUD. These commenters contended that if the Treasury Department or OMB require this payment system, HUD should attempt to obtain a legislative amendment to eliminate this requirement.

One housing authority recommended that HUD utilize the same letter of credit system for the CGP payment system that it uses for the CDBG program, claiming that this approach assures the availability of funds when needed and provides ample controls for HUD and the Treasury.

The Department intends that CGP funds will be requisitioned through the Voice Response System/Letter of Credit Control System (VRS/LOCCS) which is used for some other HUD programs. The Department believes this will streamline significantly PHA requisitions and reduce the corresponding paperwork burden. HUD intends to implement a revised requisition system by handbook as expeditiously as possible.

Another commenter asserted that the proposed rule failed to set forth the procedures that HUD will use to distribute mod funding under the program, and stated that the schedule and method of fund requisitioning and disbursement was a significant matter which should have been included in the rule. The Department can appreciate this concern, but notes that it was unable to provide greater detail concerning the method of fund requisitioning and disbursement at the time the proposed rule was published, since it was looking into several alternative methods. HUD intends to provide greater specificity in a separate requisition handbook concerning the method and procedures that are ultimately adopted in the CGP.

This commenter also objected to the proposed requirement that prior HUD approval is required for all proposed contract modifications, including modifications to construction and equipment contracts, and management contracts, claiming that this detailed level of HUD approval is inappropriate and unreasonable. Instead, the commenter maintained that PHAs should be given to the discretion over their own day-to-day mod activities, as intended by statute. Other commenters asserted, however, that HUD should utilize "thresholds," as it has in the past, whereby PHAs can self-certify on certain contracts, change orders, etc.

The Department agrees with these comments and is providing in this final rule that HUD may request or require a PHA where deficiencies have been identified to submit contracts and other documents to HUD for prior approval. This eliminates the mandatory nature of the submission requirements, as proposed in the April 1991 rule. The thresholds used in the CIAP program will not automatically roll over and apply to the CGP. Instead, thresholds may be established under the CGP where HUD has issued a notice of deficiency or order of corrective action and, where established, will also apply to CIAP programs in progress. The Department will try to establish any thresholds as high as possible to allow for maximum PHA discretion.

A commenter asserted that PHAs should be required to employ (or to require contractors to employ) residents in their modernization efforts. The Department notes that both the old CIAP, and the new CGP, have provisions governing the employment of residents in the modernization program, and contracting with resident-controlled

businesses, and the Department strongly encourages that PHAs implement these provisions.

One housing authority objected to the proposed requirement under § 968.335(c)(1) which states that a payment and performance bond is required for all contracts greater than $25,000. The housing authority maintained that this requirement also exists under CIAP, and has hampered its ability to obtain adequate competition on small contracts, i.e., $25,000 to $100,000. The housing authority proposed an alternative standard, namely, to only require payment and performance bonds for developments greater than $100,000, or to require bonds that comply with State or local requirements, whichever is less.

The $25,000 threshold is the threshold which applies government-wide and is set forth in 24 CFR Part 85, Uniform Administrative Requirements for Grants and Cooperative Agreements for States and Local Governments. The Department believes that the $25,000 threshold is necessary to protect the PHA's, as well as the Federal, interest by assuring the completion of the contract work. As a result, the comment has not been adopted. However, the Department notes that, in addition to a performance and payment bond, there are two alternative methods to assure completion, namely, a 20 percent cash escrow, and a 25 percent irrevocable letter of credit.

A number of commenters asserted that there should be a maximum time limit for HUD to respond concerning ACC approval and NEPA compliance. They maintained that without specific time guidelines upon which the PHA can rely, the implementation schedule and work plan contained in the comprehensive plan would be seriously compromised and would have little effect other than as an "administrative exercise."

The Department recognizes that any delay on HUD's part in preparing and executing the ACC amendment, and completing determinations of NEPA compliance, will affect a PHA's implementation schedule for the annual statement. The Department fully intends to prepare the ACC amendments and to complete the NEPA determinations as expeditiously as possible, but believes that a processing time frame is more appropriate for the companion handbook. HUD notes, however, that any delay by HUD is a valid reason for a PHA to extend the target dates for the obligation and expenditure of funds in the approved implementation schedule.

Performance and evaluation report (§§ 905.684 and 968.340)

A housing authority asserted that a PHA should only be required to submit a statement saying that it has complied with the comprehensive plan. The Department has not adopted this comment, since section 14 requires each CGP agency to submit "a performance and evaluation report concerning the use of funds made available under this section." The report is to include an assessment of the use of funds in relation to the needs of the agency and purposes of the modernization program and is to be made available to residents for review and comment prior to submission to HUD. It seems clear that the report is intended to be substantive and not merely a statement of compliance.

A housing authority objected to the proposed requirement that a PHA provide notice to "each" resident concerning the availability of the performance and evaluation report, and an opportunity to comment on the draft report.

The Department concurs with this comment and is providing in this final rule that a PHA must make reasonable efforts to notify residents and local government officials of the availability of the draft report, and to make copies available to residents on-site, such as the development office, where feasible, upon request. Residents and local government officials have 30 days in which to comment on the draft performance and evaluation report. Also, PHAs must include as part of the performance and evaluation report a summary of any resident comments included on the report.

HUD Review of PHA Performance (§§ 905.687 and 968.345)

A couple of commenters objected to HUD's statement in the proposed rule that "[A] PHA which has been determined to be mod troubled under the PHMAP will automatically be considered not to have a continuing capacity." These commenters contended that if a PHA fails any of the "mod troubled" standards under the PHMAP, HUD will have the authority under this provision to shut down the PHA's entire mod program by ordering it not to incur any further financial obligations, or by suspending payments.

A number of commenters objected to HUD's imposing penalties upon PHAs that have been determined to lack "modernization capability," even though they are not "mod troubled" under PHMAP. They contended that section 509 of the NAHA authorizes HUD to reduce the amount of the annual modernization grant, as determined under the formula, only if a PHA has been "designated as a troubled agency with respect to the program under section 14." Hence, these commenters maintained that HUD is not authorized by the Act to provide PHAs with less than the full formula share of mod funds using standards and criteria other than those applicable specifically to the mod program.

Two commenters asserted that HUD failed to explain in the proposed rule how it intends to implement the authority to condition a PHA's CGP grant under § 968.345, and thereby precluded commenters from determining whether the proposed level of conditioning is appropriate and authorized by statute.

In response to these comments, the Department has made major changes to this section of the rule. First of all, the statement that any mod troubled PHA would "automatically be considered not to have a continuing capacity" has been stricken. Secondly, the section on conditioning has been deleted. Thirdly, the remaining provisions regarding HUD's ability to ensure compliance with program requirements have been reorganized and clarified. These provisions are based on section 14(e)(4)(D) of the Act, a section which was created by amendments to the HCD Act of 1987. Unlike section 509 of the NAHA and certain provisions of HUD's FY 1992 Appropriations Act which specify the extent to which mod troubled PHAs may have funds withheld and reallocated based on their ratings on certain performance indicators, the compliance provisions of the HCD Act of 1987 focus on PHA failure to take corrective action to remedy specific deficiencies after notice and a reasonable opportunity to do so, and apply to all PHAs.

The final rule provides for three stages in the compliance process. First, if HUD makes a determination of a deficiency in program operations as a result of a monitoring review or review of the performance and evaluation report, HUD may issue a "notice of deficiency" stating the specific program requirement which has been violated, and requesting corrective action. Second, if the deficiency continues, HUD may issue a "corrective action order," again identifying the specific program requirement which has been violated, but in this case ordering corrective action and making the corrective action a condition of the grant agreement. Corrective action may include such actions as requiring the provision of additional information; submission of documents to HUD prior to their implementation; suspension of payments for one or more activities; or simply requiring correction of the deficiency. In cases of an extremely serious deficiency or a deficiency which has existed for a substantial period of time, HUD may issue a corrective action order without a prior notice of deficiency. For example, this may occur in the first year of the program where serious operating deficiencies have existed in the CIAP and seem likely to carry over in the CGP unless corrective action is required.

If the PHA fails to take the corrective action, HUD will have several options

available. One avenue would be to increase the stringency of the corrective action order. Another would be to declare a breach of the grant agreement with respect to some or all of the PHA's functions. If a breach of the agreement is declared, HUD could provide for continued administration of the PHA or administration of the modernization function through a contractor. Another option would be a temporary withholding of CGP funds until the PHA is able to utilize the funds legally and responsibly. It is not HUD's intention to withhold funds and then reallocate them to other PHAs, except in the most extreme and rare cases where other, more satisfactory options are not available or are not likely to succeed. The withholding provisions of §§ 905.687 and 968.345 apply on a case-by-case basis to all PHAs, including those designated as mod-troubled. Hence, these provisions are independent of the requirements applicable to mod troubled PHAs under § 968.312(c) for purposes of reducing their formula funding.

Two commenters stated that HUD has no authority to impose the "severe corrective actions" included in the proposed rule, and requested that all provisions which refer to HUD's withholding, recapturing or reallocating a PHA's modernization funding, except as authorized explicitly by statute, be removed.

One commenter objected to the interpretation that because section 14 expressly authorizes HUD to withhold a PHA's grant allocation, the Department has inherent authority to subsequently reallocate those funds. The commenter asserted that since the NAHA specified precisely the conditions under which HUD may withhold formula grants from PHAs, as well as the procedures to be used by HUD to reallocate any available funds, the Department cannot claim to have broad "inherent powers" to take away and reallocate a PHA's modernization grant on a solely discretionary basis.

Three commenters stated that HUD granted itself almost unlimited authority to withhold, recapture and reallocate a PHA's modernization grant under § 968.345 of the proposed rule. In particular, the commenters maintained that HUD provides no opportunity for appeal, only "an opportunity within a prescribed period of time, to consult with HUD regarding the proposed action."

HUD's power to withhold funds is specified in the HCD Act of 1987 amendments to section 14, and relates to specific failures to take corrective action, as described above. HUD's power to recapture "for good cause" is mentioned in section 14(k)(6), in amendments made in the NAHA. The ability to reallocate funds that have been withheld under the HCD Act of 1987 is inherent in the right to withhold. It is not reasonable to assume that Congress would intend funds that have been withheld to be held forever in situations where they cannot be responsibly managed by the PHA from which they have been withheld. Given the serious and widespread need for modernization funds, it is important that they be obligated where they can be utilized. However, as stated above, it is not HUD's intention to use this provision except in the most extreme circumstances.

The regulation has been revised with respect to "the opportunity for consultation" to specify more clearly a right to be heard by and present facts and data to the Assistant Secretary, who will make all decisions regarding withholding or recapture of funds.

One housing authority stated that the annual HUD review would be much more meaningful if it was framed as a joint review at which time HUD and the PHA would review the PHA's progress and develop the final report. It is HUD's intention to conduct monitoring reviews of PHAs in close communication with the PHA, encouraging correction of deficiencies through discussion, negotiation and technical assistance. Before HUD issues any notification of deficiency or corrective action order, the PHA will have an opportunity to discuss the proposed action with HUD and to present alternative information or analysis.

Another housing authority encouraged HUD to establish sufficient program guidelines so as to prevent future abuses of the program. This commenter stated that the safeguards should be put in place immediately so that there will be no excuses to "discontinue a program that good PHAs have clamored over for years." The Department believes that the CGP will be managed well by the overwhelming proportion of CGP agencies, and hopes to provide adequate guidance in the program handbook, high quality training, and reasonable monitoring and compliance actions to prevent and correct abuses.

V. Public Comments on the CIAP Portion of the Indian Consolidated Rule

The Indian Housing Revised Consolidated program regulation was published as an interim rule on June 18, 1990 with an effective date of October 1, 1991. The rule was published as an interim rule so that public comment could be solicited. One area where public concern was specifically requested was subpart I, Comprehensive Improvement Assistance Program. The preamble to the consolidated rule stated that the Department was considering changes to the program which would broaden the applicability of CIAP for homeownership developments. Several comments were received based on our request.

Also on November 28, 1990, the Cranston-Gonzalez National Affordable Housing Act was signed. Section 516 of the Act authorized the Secretary to provide for comprehensive modernization of homeownership units under Section 14 of the Act. The Act further states that any assistance shall be provided only in the form of a single grant for each housing development (or unit within a development) selected for such assistance.

Based on the above, HUD believes it would be useful to develop a final rule on subpart I prior to finalizing the entire consolidated rule so that the rule can be effective for the 1992 FFY. For that reason, HUD is responding in this final rule to the public comments submitted on the CIAP portion of the Indian Housing Consolidated rule. In addition, HUD is amending subpart A of part 905 (Definitions) in order to implement the comprehensive modernization of Mutual Help units.

HUD received approximately 31 public comments requesting that the Department broaden the scope of the CIAP for homeownership units, both with respect to physical and management improvement needs. In response to these comments, as well as the recently enacted NAHA, the Department has revised subpart I to provide for "comprehensive modernization for the Mutual Help program which shall be available in the Mutual Help program only, and shall be similar to the current provision for comprehensive modernization of rental units. Comprehensive modernization for Mutual Help will provide expanded eligibility for physical improvements as well as management improvements needs on a one-time per development, or per unit, basis only.

One commenter requested that the Department remove the requirement that a unit must be ten years old before it is eligible for comprehensive homeownership funding. The Department believes that restricting comprehensive modernization to Mutual Help units which are at least 10 years old is necessary to obtain the maximum benefits from the one-time comprehensive modernization, and that a Mutual Help unit should not need comprehensive modernization before that time. Additionally, Notice PIH 91-29 provides IHAs with an option for redetermining purchase price schedules. This may result in homebuyers acquiring title to homeownership units earlier than anticipated. To comprehensively modernize Mutual Help units before they are at least 10 years old also could result in units needing substantial

modernization work, for which they are no longer eligible, at the time of conveyance. The Department is, therefore, not removing the requirement that comprehensive modernization cannot be approved for Mutual Help until the units become 10 years old. This requirement, however, will not preclude an IHA from applying for homeownership modernization for construction deficiencies, energy conservation items, lead based paint testing and abatement and health and safety items, as provided under the existing CIAP.

One commenter requested a clarification in the final rule concerning an IHA's ability to apply only once every three years for the CIAP. In response this comment, HUD notes that this was never a requirement under CIAP, hence no regulatory clarification is necessary.

Three commenters requested that because of the complexity of the CIAP regulation, HUD provide funding to IHAs to develop viable CIAP applications. The Department notes that § 905.605(d) states that planning costs necessary for developing the application are eligible modernization costs. Furthermore, it states that financially distressed IHAs may request approval from HUD for up-front funding of planning costs where the HUD office determines that developing the application would otherwise present an undue financial hardship. Since these provisions already exist in the current regulation, HUD has not made any further modifications in this final rule.

One commenter disagreed with the notion that the CIAP can be used to fund Resident Management Corporations. However, it is HUD's policy to encourage participation by residents in the management of Indian housing, as may be determined appropriate by an IHA after consultation with the residents. In addition, an IHA may request CIAP funds to assist in developing or improving resident management capabilities as part of management improvements under comprehensive homeownership modernization. Based on the Department's policy, no change is being made to the regulation in this regard.

Several commenters requested changes in the regulations which would add the eligibility of certain physical improvements to the regulation, such as fenced park and playground areas for safety, fire stations and equipment, solid waste landfills or transfer stations. The regulations do not provide a detailed list of eligible physical improvements. However, § 905.670 states that all improvements funded under subpart I shall meet the HUD modernization standards so as to provide decent, safe and sanitary living conditions in IHA-owned and IHA-administered housing. The standards are designed to provide decent, safe and sanitary living conditions in Indian housing, including corrections of violations of basic health and safety codes, and address all deficiencies, including those related to deferred maintenance. In addition, these standards cover improvements relating to site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised. Any questions regarding the eligibility of work items may be referred to the appropriate HUD Office of Indian Programs or to HUD Headquarters.

HUD notes that fenced playground areas are currently eligible modernization costs under the CIAP, hence, no change in the regulation is necessary. The Department does not agree with the commenter's request to expand eligibility to include facilities which typically are not owned or operated by the IHA. Therefore, the Department has not accepted the suggestion to include solid waste landfills, transfer stations, fire stations, or fire station equipment, as eligible work items.

One commenter requested that the language in § 905.605(b)(2)(iii)(a) be revised to include as eligible management improvements "certain substance abuse activities," instead of the current language which states "certain drug elimination activities." The Department believes that, at this time, available resources should be concentrated on the very critical area of drug elimination and, therefore, has not adopted this comment. Additionally, there are other sources of funds available for substance abuse programs, such as those administered by the Indian Health Service.

One commenter requested clarification as to where the Secretary's Initiative for Economic Development appears as an economic activity. The Department agrees that additional guidance is necessary and intends to provide such guidance in the near future.

VI. Other Changes

In this final rule, HUD also is implementing a number of technical and substantive amendments to the CIAP and Comprehensive Grant programs contained in sections 509(b) through (f), and section 516, of the NAHA. A brief discussion of HUD's implementation of these amendments follows:

a. *Section 509(b)—Removal of certain requirements for PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993).* Section 509(b) amended section 14(d)(4) of the Act by removing the requirement under the CIAP for replacement needs and planning estimates, operating budget, and financial resources estimates. (See §§ 905.618(e); 968.210(e).)

b. *Section 509(c) Limitation of special purpose modernization to PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993).* Section 509(c) amended section 14(f)(2)(B) of the Act by limiting the availability of special purpose modernization funding to PHAs participating under the CIAP.

c. *Section 509(d)—Special purpose management modernization for agencies with fewer than 500 units (fewer than 250 units beginning in FFY 1993).* Section 509(d) amended section 14(i)(1) of the Act by adding special purpose management modernization as a new category of eligible activities under the CIAP. The term "special purpose management modernization" is defined under section 509(b) to mean "management improvement needs which are not otherwise eligible for assistance under the CIAP, and which pertain to any low-income housing development other than a development assisted under section 8 of the Act. HUD is implementing this provision not only with respect to rental housing developments, but also for purposes of homeownership developments assisted under the Act. (See §§ 905.615(b)(3); 968.205(b)(3).

d. *Section 509(e)(1)—establishment of 250-unit threshold beginning in FFY 1993*—Effective October 1, 1992, section 509(e)(1) of the NAHA amended section 14 of the Act by reducing the threshold for participation under the Comprehensive Grant program from 500 or more units to 250 or more units. Furthermore, section 509(e)(2) of the NAHA amended section 14 of the Act by reducing the threshold for continued participation by a PHA which has already qualified for assistance under the CGP from at least 400 units to at least 200 units. (See §§ 905.6009b)(1) and 905.601(i); 968.101(b)(1) and 968.103(i).)

e. *Section 509(f)—Transition*—Section 509(f) amended section 14 of the Act by providing that any amount that the Secretary has obligated to a PHA under the CIAP shall be used for the purposes for which the funding was provided, or for purposes consistent with an action plan submitted by the PHA under the CGP and approved by HUD, as the PHA determines to be appropriate. (See §§ 905.600(c); 968.101(c).)

f. *Section 516—Eligibility of Indian Mutual Help Housing for Comprehensive Improvement*

Assistance. Section 516 of the NAHA amended section 202(b) of the Act to provide that, notwithstanding the provisions of section 14(c) of the Act, the Secretary may provide comprehensive modernization assistance to Mutual Help developments (or units within a development) under both the CIAP and Comprehensive Grant program. This section further provides that any such assistance shall be provided ". . . only in the form of a single grant for each housing development (or unit within a development) selected for such assistance." For a full discussion of HUD's implementation of section 516 of NAHA, see Section V of this preamble.

VII. Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5 p.m. weekdays) in the Office of the Rules Docket Clerk, room 10272, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1961. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as sequence number 1515 in the Department's Semiannual Regulatory Agenda published on October 21, 1991 (56 FR 53380, 53431) under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule establishes a new Comprehensive Grant program under which larger PHAs receive modernization assistance from HUD on a formula basis. HUD does not anticipate a significant economic impact on small entities since PHAs will continue to carry out their modernization activities by entering into contracts for the work as they now do.

On February 26, 1990, the Department published an interim final rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The interim final rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds. These requirements do not apply to IHAs organized under tribal law.

The certification and disclosure requirements apply to all grants in excess of $100,000. All potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. Potential grantees should refer to 24 CFR part 87 for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

The information collection requirements for the Comprehensive Grant program have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

SUMMARY OF BURDEN HOURS

	No. of PHAs/IHAs		Annual total burden hours		Average annual burden hours	
	CIAP	Comp grant	CIAP	Comp grant	CIAP	Comp grant
Current Program	1,600		127,482		79.6	
Year 1	1,193	407	95,053	188,237.5	79.6	*462.5
Year 2	746	854	59,439	177,277	79.6	[b]207.5
Year 3	746	854	[b]59,439	53,352	79.6	62.4

The first two years of the Comprehensive Grant Program will be an anomaly because PHAs/IHAs are required to submit a Comprehensive Plan for approval. This document provides the basic framework for the Program and will be submitted during the first year. PHAs/IHAs, will be required to thoroughly analyze all physical and management needs and this requires burden hours that will not be required after the initial submission.

* 427 hours have been allocated for the 407 PHAs/IHAs that have 500 units or more (all except 38 IHAs have plans that will be adapted to current program requirements).

[b] 305 hours have been allocated for the 447 PHAs/IHAs that have 250–499 units. Although these PHAs/IHAs have never developed Comprehensive Plans, the unit inventory is smaller and they will not require as many total burden hours to thoroughly assess their needs.

The total burden hours for both the CIAP and Comp Grant Program will be 112,791 (after the initial years requiring the submission of comprehensive plans) reflecting a *decrease* in total annual burden hours of *14,691 hours.*

COMPREHENSIVE GRANT PROGRAM PAPERWORK BURDEN HOURS 1ST YEAR

Description of information collection	Section of 24 CFR affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
Executive Summary of Preliminary Estimated Costs—Form HUD–52831.	968.320(d)(1) 905.672(d)(1)	407	1	407	10	4,070
Physical Needs Assessment—Form HUD–52832.	968.320(d)(2) 905.672(d)(2)	407	1	407	252	102,564

COMPREHENSIVE GRANT PROGRAM PAPERWORK BURDEN HOURS 1ST YEAR—Continued

Description of information collection	Section of 24 CFR affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
Management Needs Assessment—Form HUD-52833.	968.320(d)(3) 905.672(d)(3)	407	1	407	110	44,770
Five-Year Action Plan—Form HUD-52834.	968.320(d)(5) 905.672(d)(5)	407	1	407	40	16,280
Local Government Statement—Form HUD-52835.	968.320(d)(6) 905.672(d)(6)	407	1	407	0.5	203.5
PHA/IHA Board Resolution Approving Comprehensive Plan or Annual Statement—Form HUD-52836.[1]	968.320(d)(7) 905.672(d)(7)	407	1	407		
Annual Statement/Performance Evaluation Report—Form HUD-52837.						
a. Prior to Fund Reservation	968.330(a) 905.678(a)		1	407	50	20,350
b. End of Program Year [1]	968.340(b) 905.684(b)					
Actual Comprehensive Grant Cost Certificate—Form HUD-52839.[1]	968.335(e) 905.681(e)					
Comprehensive Grant Program Amendment—Form HUD-52840.[2]	968.330(j) 905.678(j)	407	1	407		
Annual Statement/Performance and Evaluation Report of Replacement Review for Form HUD-52842.[1]	968.340(b) 905.684(b)					
Total Annual Paperwork Burden Hours.						188,237.5

[1] During the First year, the approval of the Comprehensive Plan and fund reservation will not occur until September. Therefore, there will be no activity in these categories during the initial year.
[2] Forms are completed by HUD for PHA/IHA Representative's signature.

COMPREHENSIVE GRANT PROGRAM PAPERWORK BURDEN HOURS 2ND YEAR

Description of information collection	Section of 24 CFR affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
Executive Summary of Preliminary Estimated Costs—Form HUD-52831.	968.320(d)(1) 905.672(d)(1)	447	1	447	10	4,470
Physical Needs Assessment—Form HUD-52832.	968.320(d)(2) 905.672(d)(2)	447	1	447	170	75,990
Management Needs Assessment—Form HUD-52833.	968.320(d)(3) 905.672(d)(3)	447	1	447	100	44,700
Five-Year Action Plan—Form HUD-52834.	968.320(d)(5) 905.672(d)(5)	854	1	407 447	10 20	4,070 8,940
Local Government Statement—Form HUD-52835.	968.320(d)(6) 905.672(d)(6)	854	1	854	0.5	427
PHA/IHA Board Resolution Approving Comprehensive Plan or Annual Statement—Form HUD-52836 [1].	968.320(d)(7) 905.672(d)(7)	854	1	854		
Annual Statement/Performance Evaluation Report—Form HUD-52837						
a. Prior to Fund Reservation	968.330(a) 905.678(a)	854	1	407 447	50 20	20,350 8,940
b. End of Program Year	968.340(b) 905.684(b)	407	1	407	20	8,140
Actual Comprehensive Grant Cost Certificate—Form HUD-52839.	968.335(e) 905.681(e)	200	1	200	5	1,000
Comprehensive Grant Program Amendment—Form HUD-52840 [1].	968.330(j) 905.678(j)	854	1	854		
Annual Statement/Performance and Evaluation Report of Replacement Review for Form HUD-52842.	968.340(b) 905.684(b)	50	1	50	5	250
Total Annual Paperwork Burden Hours.						177,277

[1] Forms are completed by HUD for PHA/IHA Representative's signature.

COMPREHENSIVE GRANT PROGRAM PAPERWORK BURDEN HOURS 3RD YEAR

Description of information collection	Section of 24 CFR affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours of response	Total hours
Five-Year Action Plan—Form HUD 52834.	968.320(d)(5) 905.672(d)(5)	854	1	407 447	10 5	4,020 2,235

COMPREHENSIVE GRANT PROGRAM PAPERWORK BURDEN HOURS 3RD YEAR—Continued

Description of information collection	Section of 24 CFR affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours of response	Total hours
Local Government Statement—Form HUD 52835.	968.320(d)(6) 905.672(d)(6)	854	1	854	0.5	427
PHA/IHA Board Resolution Approving Comprehensive Plan or Annual Statement—Form HUD 52836 [1].	968.320(d)(7) 905.672(d)(7)	854	1	854		
Annual Statement/Performance Evaluation Report—Form HUD-52837						
a. Prior to Fund Reservation	968.330(a) 905.678(a)	854	1	407 447	50 20	20,350 8,940
b. End of Program Year	968.340(b) 905.684(b)	854	1	407 447	20 10	8,140 4,470
Actual Comprehensive Grant Cost Certificate—Form HUD-52839.	968.335(e) 905.681(e)	854	1	854	5	4,270
Comprehensive Grant Program Amendment—Form HUD-52840 [1].	968.330(j) 905.678(j)	854	1	854		
Annual Statement/Performance and Evaluation Report of Replacement Review for Form HUD-52842.	968.340(b) 905.684(b)	100	1	100	5	500
Total Annual Paperwork Burden Hours.						53,352

[1] Forms are completed by HUD for PHA/IHA Representative's signature.

This final rule has been developed in accordance with Executive Order 12612, Federalism, and determined by the General Counsel not to have substantial, direct effects on PHAs. The Comprehensive Grant program simply provides an alternative means of funding PHAs, based on the allocation method contained in section 509 of the NAHA. PHAs no longer have to compete for funding, and are given greater discretion in carrying out their modernization activities. The new program is consistent with federalism principles since it reduces unnecessary burdens on PHAs. While it is a "new" program, it is primarily a change only in the way that HUD funds PHA modernization activities, and not as to the modernization activities.

In addition, since the changes in this final rule primarily relate to the allocation system for providing modernization assistance, and participation by PHAs is discretionary, the rule lacks the direct and substantial effects on PHAs required for a policy with federalism implications under the Order.

This rule has been developed in accordance with Executive Order 12606, the Family. The rule does not have the potential for significant impact on family formation, maintenance, or general well-being, since its effect is limited to providing funding for large PHAs on a formula grant basis. Families are not affected since PHAs will continue to carry out modernization activities at public housing developments.

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

List of Subjects

24 CFR Part 905

Aged, Grant programs—housing and community development, Grant programs—Indians, Handicapped, Homeownership, Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, parts 905, 968, and 990 of title 24 of the Code of Federal Regulations are amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for 24 CFR part 905 continues to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100-358) (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 905.102 is amended by adding in alphabetical order definitions of "action plan"; "administrative capabilities assessment"; "annual statement"; "chief executive officer"; "comprehensive grant number"; "comprehensive plan"; "emergency work"; "hard costs"; "major changes"; "management improvement plan"; "partnership process"; "resident groups"; "soft costs"; "special purpose management modernization"; and "substantial rehabilitation"; and by revising the definitions of "homeownership modernization"; "modernization funds"; "modernization project"; first sentence of paragraph (b) of "nonroutine maintenance"; and introductory text of "special purpose modernization", to read as follows:

§ 905.102 Definitions.

* * * * *

Action plan. A plan of the actions to be funded by an IHA over a period of five years (including an IHA's proposed allocation of its modernization funds to a reserve established under § 905.666(a)(3)) to make the necessary physical and management improvements identified in the IHA's comprehensive plan. The plan shall be based upon HUD's best estimates of the funding reasonably expected to become available over the next five-year period. The action plan is updated annually to reflect a rolling five-year base. See the Comprehensive Grant program under subpart I of this part.

* * * * *

Administrative Capabilities Assessment (ACA). An annual

evaluation of the IHA's administrative capability to administer programs in compliance with the Act and all applicable HUD regulations, contracts, HUD handbooks, and other applicable requirements. (See § 905.135).

* * * * *

Annual statement. A statement submitted annually by an IHA to HUD of the activities and related costs it expects to fund with the annual grant. An IHA may also elect to submit an annual statement covering work proposed for up to a two-year period, so that it can increase its flexibility in carrying out work items in the coming year. Soon the Comprehensive Grant program under Subpart I of this part.

* * * * *

Chief executive officer (CEO). The CEO of a unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the CEO of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of a unit of general local government (e.g., tribal administrator). The CEO for an Indian tribe is the tribal governing official.

* * * * *

Comprehensive grant number. A grant number which is unique to each annual statement covering the improvements to one or more existing Indian housing developments.

Comprehensive plan. A plan prepared by an IHA, and approved by HUD, under the Comprehensive Grant Program setting forth all of the physical and management improvement needs of the IHA and its Indian housing developments, indicating the relative urgency of needs, and which includes the IHA's action plan, cost estimates, and required local government and IHA certifications. The comprehensive plan may be revised, as necessary, but must be revised at least every sixth year. See Subpart I of this part.

* * * * *

Emergency work. Physical work items of an emergency nature, posing an immediate threat to the health or safety of residents, which must be completed within one year of funding. Under the Comprehensive Grant program, management improvements are not eligible as emergency work and, therefore, must be covered by the comprehensive plan (including the action plan), before the IHA may carry them out. See Subpart I of this part.

* * * * *

Hard costs. The physical improvement costs in development accounts 1450 through 1475 of the Low-Rent Housing Accounting Handbook, 7510.1, as revised, which include: Account 1450 Site Improvements; Account 1460 Dwelling Structures; Account 1465.1 Dwelling Equipment—Nonexpendable; Account 1470 Nondwelling Structures; and Account 1475 Nondwelling Equipment.

* * * * *

Homeownership modernization. A modernization program for a development that is under the Turnkey III Homeownership Opportunities Program or the Mutual Help Homeownership Opportunity Program. Under homeownership modernization, limited physical improvements and special purpose management improvements are eligible modernization costs.

* * * * *

Major changes. Major changes means additions, deletions or modifications of work items cumulatively totaling 10 percent or more of an IHA's annual grant allocation, excluding emergencies. Major changes require prior HUD approval. Any changes with respect to work items cumulatively totaling less than 10 percent of an IHA's annual grant allocation, excluding emergencies, do not require prior HUD approval, so long as the work is covered under the IHA's action plan. (See § 905.678(h).)

* * * * *

Management improvement plan. A document developed by the IHA in accordance with § 905.135 which specifies the actions to be taken, including timetables, to correct deficiencies identified as a result of a management assessment.

* * * * *

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements.

* * * * *

Modernization project. The improvement of one or more existing Indian housing developments, under a new project number designated for modernization under the Comprehensive Improvement Assistance Program (CIAP).

Nonroutine maintenance. * * *

(b) For purposes of the CIAP and Comprehensive Grant Modernization Programs under subpart I of this part and the applicability of wage rates, nonroutine maintenance refers to work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. * * *

* * * * *

Partnership Process. A specific and ongoing process that is designed to ensure that residents, resident groups, and the IHA work in a cooperative and collaborative manner to develop, implement and monitor the Comprehensive Grant program. At a minimum, the IHA shall ensure that this Partnership Process incorporates full resident participation in each of the required program components.

* * * * *

Resident groups. Democratically elected resident groups such as IHA-wide resident groups, area-wide resident groups, single development resident groups, or RMCs.

* * * * *

Soft costs. The non-physical improvement costs which exclude any costs in development accounts 1450 through 1475.

Special purpose management modernization. Mutual Help, Turnkey III, and rental developments are eligible for this category of special purpose modernization.

Special purpose modernization. A modernization program for a development that is limited to any one or more of the following types of physical and management improvements otherwise eligible for CIAP funding under this part, subject to a HUD determination that the physical or management improvements are necessary and sufficient to extend substantially the useful life of the development, beyond that which it would have if such improvements were not made (examples cited in each category are for illustration only):

* * * * *

Substantial rehabilitation. A modernization program for a development which provides for all physical and management improvements needed to meet the modernization and energy conservation standards and to ensure long-term physical and social viability.

* * * * *

3. Section 905.120 is amended by adding a new paragraph (k) to read as follows:

§ 905.120 Compliance with other Federal requirements.

* * * * *

(k) *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.

4. 24 CFR part 905, subpart I is revised, to read as follows:

Subpart I—Modernization

General Provisions

Sec.
905.600 Purpose and applicability.
905.601 Allocation of funds under Section 14.
905.602 Special requirements for Turnkey III and Mutual Help Developments.
905.603 Modernization and energy conservation standards.

Comprehensive Improvement Assistance Program (For IHAs That Own or Operate Fewer Than 500 Indian Housing Units) (Fewer than 250 Units Beginning in FFY 1993)

Sec.
905.609 Purpose.
905.615 Eligible costs.
905.618 Procedures for obtaining approval of a modernization program.
905.621 Modernization project.
905.624 Resident participation.
905.627 Homebuyer participation.
905.633 Special requirements for Section 23 leased housing bond-financed developments.
905.636 Additional limitations for special purpose modernization.
905.639 Contracting requirements.
905.642 Fund requisitions.
905.645 Progress reporting.
905.648 Budget revisions.
905.651 On-site inspections.
905.654 Fiscal closeout of a modernization program.

Comprehensive Grant Program (For IHAs That Own or Operate 500 or More Indian Housing Units) (250 or More Units Beginning in FFY 1993)

Sec.
905.660 Purpose.
905.666 Eligible costs.
905.667 Reserve for emergencies and disasters.
905.669 Allocation of assistance.
905.672 Comprehensive plan (including action plan).
905.675 HUD review and approval of comprehensive plan (including action plan).
905.678 Annual statement of activities and expenditures.
905.681 Conduct of modernization activities.
905.684 IHA performance and evaluation report.
905.687 HUD review of IHA performance.

Subpart I—Modernization

General Provisions

§ 905.600 Purpose and applicability.

(a) *Purpose.* Section 14 of the United States Housing Act of 1937 established the Indian Housing Modernization program, authorizing HUD to provide financial assistance to Indian Housing Authorities (IHAs) to improve the physical condition and upgrade the management and operation of existing Indian housing developments to assure that such developments continue to be available to serve lower income families. These physical and management improvements are authorized under sections 5(c) and 14(b)(2) of the Act, pursuant to the funding method prescribed under section 14(k) of the Act. This subpart prescribes the requirements and procedures for the Indian Housing Modernization program.

(b) *Applicability.* (1) The undesignated heading entitled, **General Provisions,** applies to all modernization under this subpart. The undesignated heading entitled, Comprehensive Improvement Assistance Program (CIAP), sets forth the requirements and procedures for the CIAP for IHAs that own or operate fewer than 500 Indian housing units (fewer than 250 units beginning in FFY 1993). An IHA that qualifies for participation in the CGP is not eligible to participate in the CIAP. The undesignated heading entitled, Comprehensive Grant program (CGP), sets forth the requirements and procedures for the CGP for IHAs that own or operate 500 or more Indian housing units (250 or more units beginning in FFY 1993). For purposes of the 500 or more unit threshold for participation in the CGP (250 or more units beginning in FFY 1993), and for the formula allocation under § 905.601, an existing rental and section 23 bond-financed unit under the ACC shall count as one unit; and a unit under the Turnkey III program shall count as one-fourth of a unit. A unit under the Mutual Help program shall count as one unit. An IHA that has already qualified to participate in the CGP because it owns or operates 500 or more units (250 or more units beginning in FFY 1993), may elect to continue to participate in the CGP so long as it owns or operates at least 200 units;

(2) This subpart applies to IHA-owned low income Indian housing developments (including developments managed by a Resident Management Corporation pursuant to a contract with the IHA), and to Section 23 Leased Housing Bond-Financed developments, for which IHAs request assistance under the CIAP or CGP. This subpart also applies to the implementation of modernization programs which were approved before FFY 1992. Rental developments which are planned for conversion to homeownership under sections 5(h), 21, or 301 of the Act, but which have not yet been sold by an IHA, continue to qualify for assistance under this part. This subpart does not apply to developments under the Section 23 Leased Housing Non-Bond Financed program, the Section 10(c) Leased program, or the Section 23 or Section 8 Housing Assistance Payments programs.

(c) *Transition.* Any amount that HUD has obligated to an IHA under the CIAP program must be used for the purposes for which the funding was provided, or for purposes consistent with an approved action plan submitted by the IHA under the CGP, as the IHA determines to be appropriate.

(d) See subpart A of this part for applicable requirements, other than the Act, that apply to modernization under this subpart.

§ 905.601 Allocation of funds under section 14.

(a) *General.* This section describes the process for allocating modernization funds to the aggregate of IHAs and PHAs participating in the CIAP (i.e., agencies that own or operate fewer than 500 units, or fewer than 250 units beginning in FFY 1993), and to individual IHAs and PHAs participating in the CGP (i.e., agencies that own or operate 500 or more units, or 250 or more units beginning in FFY 1993). The program requirements governing PHA participation in the CIAP and CGP are contained in 24 CFR part 968.

(b) *Set-aside for emergencies and disasters for CGP agencies.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part, $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to IHAs under the CGP and to PHAs under 24 CFR part 968 (subpart C), for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY so that it always begins with a $75 million balance. Any unused funds from previous years will remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies, and the procedures by which an IHA may request such funds, are set forth in § 905.667.

(c) *Set-aside for credits for mod troubled PHAs under 24 CFR part 968, subpart C*—(1) *General.* After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside no more than five percent of the remaining amount for the purpose of providing credits to PHAs under 24 CFR part 968 (subpart C) that were formerly designated as mod troubled agencies under the Public Housing Management Assessment program ("PHMAP") at 24 CFR part 901. The purpose of this set-aside is to compensate such PHAs for amounts previously withheld by HUD because of their prior designation as a mod troubled agency;

(2) *Nonapplicability to IHAs.* Since the PHMAP performance indicators under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed "mod troubled" for purposes of the CGP. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(a) of the Act, nor do they participate in the set-aside of credits established under paragraph (c)(1) 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 IHAs and PHAs.[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 IHAs and PHAs, as follows:

(1) *Determination of backlog need:* (i) *Statistically reliable data.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(4) of this section are statistically reliable for individual IHAs and PHAs with 500 or more units (250 or more units beginning in FFY 1993), or the aggregate of IHAs and PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993) 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 IHAs and PHAs with 500 or more units (250 or more units beginning in FFY 1993), 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 IHA or PHA, 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 IHA provides HUD with the actual date of construction, in which case HUD will use the age of the development (or, for scattered sites, the average age 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); and

(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 paragraphs (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 Indian housing stock as of 1991;

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

(4) *Categories of backlog need.* The most recently available data to be used under either paragraphs (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 Indian housing developments;

(ii) Items that must be added to developments to meet HUD's modernization standards under § 905.603, and State, local and tribal 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 IHAs and PHAs, determined as follows:

(1) *Statistically reliable data.* Where HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual IHAs and PHAs with 500 or more units (250 or more units beginning in FFY 1993), and for the aggregate of IHAs and PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993), 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)(l)(i) of this section; or

(2) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data

[1] In 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 calling the HUD User at 1-800-245-2691.

concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual IHAs and PHAs with 500 or more units (250 or more units beginning in FFY 1993), 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 backlog need under paragraph (f)(3) of this section;

(ii) Objectively measurable data concerning the following IHA or PHA, 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 at 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 IHA or PHA that owns or operates 500 or more units (250 or more units beginning in FFY 1993). (Weighted at .0144); and

(iii) An equation constant of 602.1.

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

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

(ii) Items that must be added to developments to meet HUD's modernization standards under § 905.603, and State, local and tribal codes.

(g) *Allocation for CIAP.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs and PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993) shall be allocated to IHAs in accordance with the requirements of the undesignated heading under this subpart entitled, "Comprehensive Improvement Assistance Program," (CIAP) and to PHAs in accordance with the requirements of 24 CFR part 968 (subpart B).

(h) *Allocation for CGP.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs with 500 or more units (250 or more units beginning in FFY 1993) shall be allocated in accordance with the requirements of the undesignated heading under this subpart entitled, "Comprehensive Grant Program," and for PHAs in accordance with the requirements of 24 CFR part 968 (subpart C). An IHA that is eligible to receive a grant under the CGP may appeal the amount of its formula allocation under this section in accordance with the requirements set forth in § 905.669(b)(2). An IHA which is eligible to receive modernization funds under the CGP because it owns or operates 500 or more units (250 or more units beginning in FFY 1993), is disqualified from receiving assistance under the CIAP under this part.

(i) *Use of formula allocation.* Any amounts allocated to an IHA under paragraphs (e) and (f) of this section may be used for any eligible activity under this subpart, notwithstanding that the allocation is determined by allocating half based on the relative backlog needs and half based on the relative accrual needs of IHAs and PHAs.

(j) *Calculation of number of units.* For purposes of determining under this section the number of units owned or operated by an IHA or PHA, and the relative modernization needs of IHAs and PHAs, 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, except that once the unit has been funded for substantial rehabilitation under the CGP, it will be phased out over a period of three years for purposes of the threshold for participation in the CGP and for the formula.

(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 unit, HUD shall not adjust the amount the IHA or PHA 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 IHA or PHA 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) New units which are added to an IHA's or PHA's inventory (or increases resulting from the conversion of existing units) will be added to the overall unit count so long as they are covered by an ACC amendment as of the first day of the FFY in which the formula is being run. Any increase in ACC units as of the beginning of the FFY, including increases as a result of conversion, shall result in an adjustment upwards in the number of units under the formula. New units added to the ACC after this date will be counted for formula purposes as of the following FFY;

(ii) Units which are lost as a result of demolition, disposition or conversion shall not be offset against units subsequently added to an IHA's or PHA'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 then one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this section is less than one percent, the IHA or PHA will be funded as though no charge 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.

(4) *Subsequent reductions in unit count.* (i) Once an IHA's or PHA'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 an IHA's or PHA's units, will also be phased in over a three-year period, as described in paragraph (k)(2) of this section.

§ 905.602 Special requirements for Turnkey III and Mutual Help developments.

(a) Promptly after HUD approval of the application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section, except for:

(1) Eligible homeownership costs, as set forth in §§ 905.615(f)(1) and 905.666(d)(1);

(2) Comprehensive modernization of a Mutual Help unit pursuant to § 905.615(f)(2), or the substantial rehabilitation of a Mutual Help unit pursuant to § 905.666(b)(2);

(3) Special purpose modernization of a vacant or non-homebuyer occupied Turnkey III unit pursuant to § 905.615(f)(3), or the substantial rehabilitation of a vacant or non-homebuyer occupied Turnkey III unit pursuant to § 905.666(b)(3).

(b) For Turnkey III developments that have purchase price schedules and for Mutual Help developments placed under ACC on or after March 9, 1976:

(1) The amount of modernization cost attributable to the home, as shown in the HUD-approved application, shall be added to the homebuyer's purchase price as initially determined for Turnkey III or Mutual Help developments;

(2) The period of the homebuyer's current purchase price schedule shall be extended by the same percentage as the percentage of increase in the homebuyer's purchase price. The new purchase price schedule shall:

(i) Show monthly amortization of the new purchase price over a period commencing on the same day as the original purchase price schedule and terminating at the end of the extended period; and

(ii) Be computed on the basis of the same interest rate as used for the current purchase price schedule. (For Mutual Help grant funding, no interest rate is used when computing the new purchase price schedule.)

(3) If a modernization program is approved for a development after one or more earlier modernization programs for the same development, the total amount of modernization cost attributable to the home under the prior modernization program(s) shall be included as part of the homebuyer's initial purchase price in applying the provisions of paragraphs (b)(1) and (b)(2) of this section.

(c) For Turnkey III developments that do not have purchase price schedules and Mutual Help developments placed under ACC before March 9, 1976 and not converted:

(1) These developments do not involve purchase price schedules for amortization of the homebuyer's purchase price over a fixed period of time because the homebuyer's purchase price in these developments is based on the unamortized balance of the portion of the development debt attributable to the home. Consequently, it is necessary to establish a separate schedule for the amortization of the estimated modernization cost attributable to the home, as shown by HUD-approved application;

(2) The IHA shall furnish to the homebuyer a schedule showing monthly amortization of the modernization cost attributable to the home, at the minimum loan interest rate specified in the ACC for the modernization project, over a period commencing on the first day of the month after the date of original occupancy of the home by the homebuyer and terminating at the end of the period determined as follows:

(i) Divide the amount of the modernization cost attributable to the home (including the total amount of modernization cost attributable to the home under prior modernization programs, if any) by the amount of the current HUD-approved estimated replacement cost of the home;

(ii) Multiply this amount by 25, round the result to the next higher number, and add that number to 25. This is the number of years to be used as the period for the modernization amortization schedule; and

(iii) The purchase price for the unit shall be the sum of:

(A) the balance of the debt attributable to the home and

(B) the amount remaining on the modernization schedule at the time of settlement.

§ 905.603 Modernization and energy conservation standards.

(a) All improvements funded under this subpart, which may include alterations, betterments, additions, replacements or non-routine maintenance, shall meet the HUD modernization standards, described in paragraph (b) of this section and to comply with lead-based paint testing and abatement requirements in Subpart H of this Chapter and established to provide decent, safe, and sanitary living conditions in IHA-owned and IHA-operated housing. All improvements funded under this part shall meet the HUD-energy conservation standards for cost-effective energy conservation measures in such developments, described in paragraphs (c) and (d) of this section.

(b) The modernization standards are comprised of both mandatory and development-specific standards. The mandatory standards are intended to provide decent, safe, and sanitary living conditions in Indian housing, including corrections of violations of basic health and safety codes, and to address all deficiencies, including those related to deferred maintenance. The development-specific standards permit an IHA to undertake improvements that are necessary or highly desirable for the long-term physical and social viability of a development, which includes site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards, and in other documents cited in the Handbook. Copies may be obtained by writing to the HUD Regional Office of Indian Programs within the applicant's jurisdiction.

(c) The energy conservation standards are standards for the installation of cost-effective energy conserving improvements, including solar energy systems. The energy conservation standards provide for the conducting or updating of energy audits, including cost-benefit analyses of energy saving opportunities, in order to determine which measures will be cost effective in conserving energy. The energy conservation standards are contained in the HUD Workbook, Energy Conservation for Housing, and in other documents cited in the Workbook.

(d) Life-cycle cost-effective energy performance standards established by HUD to reduce the operating costs of the Indian housing developments over the estimated life of the buildings shall apply to developments modernized under this subpart. These standards are contained in HUD Handbook 7418.1, as revised, Life-Cycle Cost Analysis for Utility Combinations. Copies may be obtained by writing to the HUD Regional Office of Indian Programs within the applicant's jurisdiction.

Comprehensive Improvement Assistance Program (For IHAs That Own or Operate Fewer Than 500 Indian Housing Units) (Fewer Than 250 Units Beginning in FFY 1993)

§ 905.609 Purpose.

The purpose of the undesignated heading entitled, Comprehensive Improvement Assistance Program (CIAP), is to set forth the policies and procedures for the CIAP under which IHAs that own or operate fewer than a total of 500 units of Indian housing (fewer than 250 units beginning in FFY 1993) may receive financial assistance for the modernization of Indian housing developments, including comprehensive, emergency, lead-based paint, homeownership, and special purpose modernization. Funding for this program is provided under section 5(c) of the Act, pursuant to section 14(k) of the Act (see § 905.601 for the formula allocation process for the aggregate of CIAP agencies under this subpart.

§ 905.615 Eligible costs.

(a) *Physical improvements.* Physical improvements eligible for modernization funding include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 905.603. These standards may be exceeded only when necessary or highly desirable for the long-term physical and social viability of the individual development. If demolition is proposed, the IHA shall comply with subpart M.

(b) *Management improvement costs—(1) Eligibility.* Management improvements that are development-specific or IHA-wide in nature are eligible costs only under special purpose management modernization under paragraph (b)(3) of this section, or comprehensive modernization, subject to all of the following conditions:

(i) The management improvements are necessary to correct identified management problems and to sustain the physical improvements at the development to be modernized comprehensively, or pursuant to special purpose modernization, as set forth in this section;

(ii) The management improvements require additional funds for implementation and the funds are not available from other sources;

(iii) The combined costs for management improvements and planning under paragraph (d) of this section do not exceed 10 percent of the total estimated physical improvement costs for a multi-stage project (from all FFYs), unless specifically approved by HUD. Under paragraph (d) of this section, planning costs shall not exceed five percent of the funds available to the HUD office in a particular FFY;

(iv) Management improvement costs are funded only for the implementation period of the physical improvements. In rare cares, the HUD office may approve a longer period, up to a maximum of five years, where it is clearly shown to be necessary to complete the initial installation and demonstrate that the management work item will bring about needed management improvements; and

(v) Where an approved modernization program includes management improvements that involve ongoing costs, HUD is not obligated to provide continued funding or additional operating subsidy after the end of the implementation period of the management improvements. The IHA is responsible for finding other funding sources, reducing its ongoing management costs, or terminating the management activities.

(2) *Eligible management areas.* Subject to the conditions set forth in paragraph (b)(1) of this section, management improvements may involve or upgrade the following areas:

(i) Management, financial and accounting control systems of the IHA;

(ii) Adequacy and qualifications of personnel employed by the IHA in its management and operation, for each significant category of employment;

(iii) Adequacy and efficacy of the following for the development to be modernized;

(A) Resident programs and services, including certain drug elimination activities;

(B) Resident and development security;

(C) Resident selection and eviction;

(D) Occupancy;

(E) Rent collection;

(F) Maintenance; and

(G) Equal opportunity; and

(iv) Resident management corporations under paragraph (i) of this section.

(3) *Special purpose management modernization.* Special purpose management improvements are eligible modernization costs under the category of special purpose modernization, if they address needs which are not otherwise eligible for assistance under paragraph (b)(1) of this section.

(c) *Relocation and moving costs.* (1) *Temporary relocation.* The following policies cover residential residents who are moved temporarily due to rehabilitation or demolition of a development assisted under this subpart, but are offered the opportunity to return to the same development at the same site, although not necessarily the same unit or building in the development. The IHA shall provide such residents:

(i) All actual reasonable moving and related costs incurred in connection with the temporary relocation, by either undertaking the move itself or reimbursing for such costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of: the date and approximate duration of the temporary relocation; the suitable, decent, safe, and sanitary temporary housing that will be made available; and the provisions of paragraph (c)(1)(i) of this section;

(2) *Relocation assistance for displaced persons.* An IHA must provide relocation assistance to displaced persons, as defined in paragraph (c)(6)(i) of this section, at the levels described in, and in accordance with, the provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601;

(3) *Real property acquisition requirements.* The acquisition of real property for a development by an IHA is subject to the URA and the requirements described in 49 CFR part 24, subpart B, whether it is organized pursuant to State law or Tribal law;

(4) *Responsibility of the IHA.* The IHA shall certify compliance with URA and 49 CFR part 24 and with the requirements of this section. This certification shall be included in the agreement between HUD and the IHA. The cost of assistance required by this section may be paid from local public funds or tribal funds, funds provided in accordance with this subpart, or funds available from other sources;

(5) *Appeals.* A person who disagrees with the IHA's determination concerning a payment or other assistance required by this section may file a written appeal of that determination with the IHA. The appeal procedures to be followed are described in 49 CFR 24.10;

(6) *Definition of displaced person.* (i) The term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently and involuntarily, as a direct result of acquisition, rehabilitation, or demolition for a development assisted under this subpart. Permanent, involuntary moves for an assisted development include:

(A) A permanent move from the real property (development/site) following notice by the IHA to move permanently from the property, if the move takes

place on or after the date that HUD approves the IHA's application for assistance;

(B) A permanent move from the real property that occurs before HUD's approval of the IHA's application, if the IHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation or demolition for a development;

(C) A permanent move from the real property by a resident of a dwelling unit that occurs after the execution of the ACC between the IHA and HUD if:

(*1*) The resident has not been provided a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same development/site following the completion of the development at a rent, including estimated average utility costs, that does not exceed the greater of the resident's rent and estimated average utility costs before the initiation of negotiations (as defined in 49 CFR 24.2(k)), or 30 percent of gross household income; or

(*2*) the resident has been required to relocate temporarily as described in paragraph (c)(1) of this section, but the resident is not offered payment for all actual reasonable moving and related expenses incurred in connection with the temporary relocation or other conditions of the temporary relocation are not reasonable; or

(*3*) the resident is required to move to another unit in the same development/site, but is not offered reimbursement for all moving and related expenses incurred in connection with the move;

(ii) A person shall not qualify as a displaced person, if:

(A) The person has been evicted for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement and the IHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property after HUD approval of the application and, before commencing occupancy, received written notice of the expected displacement;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) The IHA determines and HUD concurs that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the development;

(iii) The IHA may, at any time, request a HUD determination as to whether a displacement is or would be covered by 49 CFR part 24.

(d) *Planning costs.* Planning costs necessary for developing the application (*i.e.*, costs incurred before modernization program approval) are eligible modernization costs. These costs may be reimbursed after application approval. Financially distressed IHAs may request approval from HUD for upfront funding of planning costs where the HUD office determines that developing the application would otherwise present an undue financial hardship. For this purpose, a financially distressed IHA is an IHA that has an operating reserve level of 20 percent or less of its authorized maximum or other level as determined by HUD, as shown on the latest year-end financial statement. Not more than five percent of the funds available to the HUD office in a particular FFY shall be used for planning costs.

(e) *Administrative costs.* Administrative costs necessary for the additional design and implementation of the physical and management improvements (*i.e.*, costs to be incurred after modernization program approval) are eligible modernization costs, as follows:

(1) *Nontechnical and technical salaries.* The salaries of nontechnical and technical IHA personnel assigned full-time or part-time to the modernization program are eligible modernization costs. Any proration of salaries shall be justified by the IHA, authorized by the HUD office, and reflected by an appropriate revision to the IHA's operating budget; and

(2) *Employee benefit contributions.* IHA contributions to employee benefit plans on behalf of nontechnical and technical IHA personnel are eligible modernization costs in proportion to the amount of salary charged to the modernization program.

(f) *Turnkey III and Mutual Help developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III and Mutual Help developments are limited to work items which are not the responsibility of the homebuyer families, and which are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, and lead-based paint testing and abatement. Nonroutine maintenance or replacements, additions, and item that are the responsibility of the homebuyer families are ineligible modernization costs for homeownership developments. Management improvements are eligible modernization costs for homeownership developments under special purpose modernization, in accordance with § 905.615(b)(3). Costs of health and safety work items shall increase the purchase price and amortization period for homebuyer families; other eligible costs shall not increase the purchase price and amortization period;

(2) *Exception for Mutual Help units.* Notwithstanding the requirements of paragraph (f)(1) of this section, an IHA may use no more than a single CIAP grant under this subpart for purposes of comprehensively modernizing a Mutual Help unit which is at least 10 years old, and which the IHA has identified in its CIAP application;

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.* Notwithstanding the requirements of paragraph (f)(1) of this section, an IHA may carry out special purpose modernization in a Turnkey III development whenever a Turnkey III unit becomes vacant or is occupied by a non-homebuyer family. An IHA that intends to use funds under this paragraph must identify in its application the estimated number of units that the IHA is proposing for special purpose modernization and subsequent sale. In addition, the IHA must demonstrate in its application that: the proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III program (see Subpart G of this part); and the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 905, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed for special purpose modernization. Before an IHA may be approved for the special purpose modernization 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 operating subsidy. Any increase in the value of unit caused by its special purpose modernization under this paragraph shall be reflected solely by its subsequent appraised value and not by an automatic increase in its selling price.

(g) *Resident management corporations.* Eligible modernization costs include use of management improvement funds to assist a resident management corporation, as defined in § 905.355, to develop its management capabilities and carry out management improvements identified as IHA-wide or development-specific in nature, under the terms of a management contract between the IHA and the resident management corporation. Such funding

is subject to the limitations indicated in paragraph (b) of this section.

§ 905.618 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* As soon as possible after modernization funds for a particular FFY become available, HUD shall give written notification of the availability of such funds and the time frame for submission of the application.

(b) *IHA consultation with local officials and residents/homebuyers.* The IHA shall develop the application in consultation with local officials and residents/homebuyers at the development to be modernized, as set forth in § 905.624 and § 905.627. Before developing the application, the IHA shall consult with local officials as to whether the proposed comprehensive, special purpose, or homeownership modernization is financially feasible and will result in long-term physical and social viability of the development.

(c) *Application.* The IHA shall submit to HUD an application, in a form prescribed by HUD, which shall include, but not be limited to the following:

(1) A five-year funding request plan, which includes the IHA's estimate of the comprehensive modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its developments sufficient to meet the modernization and energy conservation standards in § 905.603, including any special purpose and homeownership needs, as well as any emergency needs in the current FFY;

(2) A preliminary assessment of the total physical and management needs of each development for which the IHA is requesting comprehensive modernization and of the specialized needs for each development for which the IHA is requesting special purpose, emergency or homeownership modernization funds in the current FFY;

(3) For each development proposed for comprehensive modernization in the current FFY, an identification of an estimate of the total costs of replacement of the equipment, systems, or structural elements that would normally be replaced (assuming routine and timely maintenance is performed) over the remaining period of the ACC or during the 30-year period beginning on the date of submission of the application, whichever period is longer;

(4) A resolution by the IHA Board of Commissioners, approving the application and containing certifications as required by HUD;

(5) Other data related to the operation of the program, as may be required to comply with other Federal laws and regulations.

(d) *HUD screening and review.* The HUD office shall screen and review the applications, and select applications for further processing, on the basis of such factors as the extent and urgency of the need and the IHA's management and modernization capability. Management capability will be deemed to be adequate unless, in accordance with § 905.135, HUD has determined that management practices are inadequate. Among the IHA practices considered for this determination are the management, financial, and accounting controls; resident programs and services; resident and development security; resident selection and eviction; occupancy; and maintenance. Modernization capability is adequate if the IHA obligates approved modernization funds within the HUD-approved schedule, except in circumstances beyond the IHA's control, and the IHA's expenditure of modernization funds assures the long-term social and physical viability of the modernized units. Funds are considered obligated when the IHA awards a contract or starts force account work for the modernization project. Circumstances beyond the IHA's control may be found by the HUD office in such cases as delays resulting from litigation, environmental review or strikes.

(e) *IHA preparation for joint review.* The IHA shall prepare for the joint review by:

(1) Reaching agreement with the HUD office on the specific development(s) to be covered during the joint review;

(2) Completing an assessment of the needs of each development for which the IHA is requesting funds in the current FFY. The IHA will complete a detailed, comprehensive assessment, in a form prescribed by HUD, of the total physical and management needs of each development for which the PHA is requesting comprehensive or special purpose modernization; except that if the request for a particular development is limited to physical improvements to increase accessibility for elderly and handicapped families and to increase energy efficiency, a specialized assessment will be completed unless HUD determines that there is evidence indicating that the development has major problems that justify a comprehensive assessment. An assessment of specialized physical improvement needs will be completed for each development for which the IHA is requesting emergency or homeownership modernization;

(3) Reviewing the other factors to be covered during the joint review as prescribed by HUD.

(f) *Joint review.* If determined by HUD to be necessary, the IHA and the HUD office may conduct a joint review to discuss the proposed modernization program, as set forth in the application, and reach tentative agreement on the IHA needs. The joint review may include an on-site inspection of the property and resolution of the relevant issues as prescribed by HUD.

(g) *Comprehensive modernization approach.* HUD will fund proposed comprehensive modernization in one stage, or, on an exception basis, in more than one stage, subject to future fund availability. Grounds for exception including an IHA's lack of management capability, as determined in accordance with § 905.135, or lack of modernization capability, as described in paragraph (d) of this section (which necessitates multi-stage funding).

(1) *One-stage funding.* Under one-stage funding, the total amount of modernization funds for all required physical and management improvements at the development shall be approved at one time, out of funds for a single FFY, under one application;

(2) *Multi-stage funding.* Under multi-stage funding, the total amount of the modernization funds for all required physical and management improvements at the development shall be approved in the fewest number of stages that are feasible, over several different FFYs. The first stage will include funds for architectural/engineering work and/or a portion of the physical improvements. Management improvements may be included in the first stage to the extent they are eligible costs under § 905.615(b);

(i) *First stage.* At the first stage of funding, the application shall include a comprehensive assessment of the development's physical and management improvement needs and a plan under paragraph (c) of this section addressing only the work items to be completed during this stage. When approving the first stage, the HUD office will indicate the approximate balance of the funds required to complete the comprehensive modernization, but also will indicate that future funding will be subject to all of the following conditions: the availability of funds, satisfactory progress by the IHA in obligating first stage and subsequent stage funds, IHA submission of additional documents, and IHA compliance with HUD regulatory and statutory requirements;

(ii) *Subsequent stages.* Where the IHA is requesting funds for a subsequent stage of a multi-stage comprehensive modernization, the HUD office will determine whether the IHA has made satisfactory progress in obligating prior stage funds, whether it has submitted

necessary additional documents, and whether it has complied with HUD regulatory and statutory requirements. If the IHA has not satisfied these conditions, the HUD office will not approve that subsequent stage of funding at this time. The IHA submission for any subsequent stage should not duplicate items previously submitted.

(3) *Implentation.* After the application for each stage is approved, the IHA and the HUD office shall agree on an implementation period that is appropriate for that funding stage, not to exceed five years for any stage from the date on which that stage is first funded.

(h) *HUD funding decisions.* After all of the joint reviews, the HUD office will determine whether the IHA will be approved for funding and whether any further modifications to the application are required, including IHA submission of the budget. HUD will give preference to IHAs that request assistance for:

(1) Group 1, developments having emergency conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to resident life, health, or safety, or are related to fire safety. Funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation;

(2) Group 2, developments:

(i) Having conditions that threaten resident life, health, or safety or having a significant number (10 percent or more) of vacant or substandard units; and

(ii) Located in IHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, and homeownership modernization); and

(iii) Within this group, the Secretary may give priority to additional factors, such as whether the development is at the second or subsequent stage of comprehensive modernization, and the cost benefit.

(3) Group 3, other developments located in IHAs that have demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, and homeownership modernization). The Secretary may give priority to factors which demonstrate that the modernization will result in the greatest cost benefit;

(4) HUD may set aside for special purpose modernization a portion of the total modernization funds available for any FFY, as determined by HUD to be necessary to assure that special purpose needs are appropriately addressed;

(i) *ACC amendment.* After HUD approval of the application, HUD and the IHA shall enter into an ACC amendment for modernization funds.

(j) *Implementation schedule.* After HUD executes the ACC, the IHA shall submit for HUD approval an implementation schedule for each development in the approved modernization program.

§ 905.621 Modernization project.

(a) *Modernization projects.* For purposes of funding modernization, each modernization program approved for an IHA shall be treated as a separate modernization project. The modernization project may include improvements to one or more developments. Improvements to a single development may be included in more than one modernization project.

(b) *ACC.* HUD and the IHA shall enter into an ACC amendment for each modernization project. The ACC amendment shall require lower income use of the 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).

(c) *Declaration of trust.* The IHA 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 IHA is obligated to operate the individual developments receiving modernization grant funds in accordance with the ACC, the Act, the HUD regulations and requirements.

(d) *Other program requirements.* The IHA shall comply with 24 CFR part 85, except as modified by § 905.639, and with other program requirements, as enumerated in § 905.120. In addition, in accordance with the ACC, IHA shall carry insurance, as prescribed by HUD, to cover the additional exposures created by the modernization activities and to reflect the increased value of the buildings after modernization

§ 905.624 Resident participation.

For a rental development only, before submission of the application, the IHA shall consult with the residents (including, for purposes of this section, resident organizations and resident management corporations, if any) regarding its intent to submit an application for modernization funds. Before the joint review, the IHA shall notify the residents of the development to be modernized of the proposed modernization program, give residents a reasonable opportunity to present their views on the proposed program and alternatives to it, and give full and serious consideration to resident recommendations. At the Joint Review, or upon request, the IHA shall provide the residents and HUD with a copy of, and an evaluation of, resident recommendations, indicating the reasons for IHA acceptance or rejection, consistent with HUD requirements and the IHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, the IHA shall inform the residents of the approved work items. The provisions of this section do not apply to proposed work items of an emergency nature, affecting the life, health, and safety of residents, which are processed in a "first track" mode outside the normal processing schedule. However, the IHA shall inform residents of approved emergency work items.

§ 905.627 Homebuyer participation.

(a) For a homeownership development only, before the joint review (if one is held), the IHA shall discuss the modernization program with the homebuyer families of the development to be modernized and advise them of the effect of the modernization on the terms of the homebuyer agreements. The IHA shall afford the homebuyer families a reasonable opportunity to present their views on the proposed program and give full and serious consideration to their recommendations, consistent with HUD requirements and the IHA's own determination of efficiency, economy, and need.

(b) The IHA shall inform each homebuyer family that:

(1) To participate, it must be in compliance with its financial obligations under its homebuyer agreement;

(2) It will have an opportunity to express its views and preferences with respect to the modernization of its home;

(3) The purchase price and the amortization period will be increased as provided in § 906.602;

(4) It will have an opportunity to participate in the final inspection of the work to determine completion in accordance with the requirements; and

(5) Participation in the program is optional.

(c) The IHA shall provide each homebuyer family with a copy of the IHA's evaluation of its recommendations, the tentative decisions reached on the modernization program to be submitted to the HUD office, the estimated cost of the proposed modernization program, and the amount of the cost to be attributed to its home.

(d) If the homebuyer family decides to participate in the modernization

program with respect to any of the proposed work items, it must agree in writing that its homebuyer agreement will be amended upon approval of the application to provide that, as a result of the amount of modernization cost attributed to its home, the purchase price and the amortization period will be increased as provided in § 905.602.

(e) Any homebuyer family may decline to participate without risk to the homebuyer status.

(f) Before HUD approval of the application, the IHA shall obtain a signed agreement from each participating homebuyer family that it will amend its homebuyer agreement upon approval of the application. The IHA shall retain copies of the signed agreements in its files for inspection by the HUD office.

(g) The provisions of paragraphs (b) through (f) of this section apply only where modernization work relates to health and safety items.

§ 905.633 Special Requirements for Section 23 Leased Housing Bond-Financed Developments.

(a) A Section 23 Leased Housing Bond-Financed development is eligible for modernization only if HUD determines that the development has met the following conditions:

(1) The development was financed by the issuance of bonds;

(2) Clear title to the development will be conveyed to or vested in the IHA at the end of the Section 23 lease term;

(3) There are no legal obstacles affecting the IHA's use of the property as Indian housing during the 20-year period of the modernization;

(4) After completion of the modernization, the development will have a remaining useful life of at least 20 years and it is in the financial interest of the Federal Government to improve the development; and

(5) The development is covered by a cooperation agreement between the IHA and local governing body the 20-year period of the modernization.

(b) A Section 23 Leased Housing Bond-Financed development that has been conveyed to the IHA after bonds have been retired is similarly eligible for modernization if the conditions specified under paragraph (a) of this section have been satisfied.

§ 905.636 Additional limitations for special purpose modernization.

(a) For each of the three types of special purpose modernization relating to major equipment systems or structural elements, security, and reduction of vacant, substandard units, an IHA may obtain special purpose modernization funding only once for a development that has not been comprehensively modernized, except as provided in § 905.615(f)(2) for the special purpose modernization of vacant or non-homebuyer occupied Turnkey III units. Subsequent funding for the same development for any additional physical improvements of these types may be provided only as a part of a program that addresses all of the physical and management improvement needs of the development under a comprehensive modernization program. This limitation does not apply to a development that has been comprehensively modernized.

(b) Special purpose modernization to reduce the number of vacant, substandard units will be limited to physcial improvements that are necessary to meet local code requirements and return such units to a condition that is comparable to the condition of occupied units in the same development, except as provided in § 905.615(f)(3).

§ 905.639 Contracting requirements.

(a) *Compliance with State, Tribal and local law and Federal requirements.* The IHA shall comply with State, Tribal and local laws and Federal requirements applicable to bidding and contract awards.

(b) *IHA agreement with architect/engineer.* The IHA shall obtain architectural/engineering services through the competitive proposal process, as described in § 905.175(d). Notwithstanding 24 CFR 85.36(g), the IHA shall comply with HUD requirements either to:

(1) Submit the contract for prior HUD approval before execution; or

(2) Certify that the scope of work is consistent with any agreements reached with HUD, and that the fee is appropriate and does not exceed the HUD-approved budget amount.

(c) *Sealed bid (formal advertising) requirements.* For each construction or equipment contract over $25,000, the PHA shall conduct formal advertising as provided in § 905.175(c), except for procurement under the HUD Consolidated Supply Program, as described in § 905.175(f).

(d) *Assurance of completion.* For each construction or equipment contract over $25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h), subpart B of this part, and as may be required by law, one of the following:

(1) Separate performance and payment bonds, each for 50 percent or more of the contract price;

(2) A 20 percent cash escrow; or

(3) A 25 percent letter of credit.

(e) *Construction and bid documents.* Notwithstanding 24 CFR 85.36(g) and subpart B of this part, the IHA shall comply with HUD requirements either to:

(1) Submit complete construction and bid documents for prior HUD approval before inviting bids; or

(2) Certify to receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and that the bid documents are complete and include all mandatory items.

(f) *Contract award.* The IHA shall contain HUD approval of the proposed award of modernization construction and equipment contracts if the bid amount exceeds the HUD-approved budget amount or if the procurement meets the criteria set forth in § 85.36(g)(2) (i) through (iv). In all other instances, the IHA shall make the award without HUD approval after the IHA has certified that:

(1) The bidding procedures and award were conducted in compliance with State, Tribal or local laws and Federal requirements;

(2) The award does not exceed the approved budget amount and does not meet the criteria in § 85.36(g)(2) (i) through (iv) for prior HUD approval; and

(3) HUD clearance has been obtained for the award under previous participation procedures, including absence of the contractor from the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(g) *Contract modifications.* Notwithstanding 24 CFR 85.36, except in an emergency endangering life or property, the IHA shall comply with HUD requirements either to submit the proposed contract changes for prior HUD approval or to certify that the proposed work is within the scope of the contract and that any additional costs are within the latest HUD-approved budget or otherwise approved by HUD.

(h) *Construction requirements.* The IHA shall submit to the HUD office periodic progress reports and shall submit all contract settlement documents for prior HUD approval.

(i) *Management improvement contracts.* The IHA shall obtain consultant services through the competitive proposal process, as described in § 905.175(d). The IHA shall comply with HUD requirements either to:

(1) Submit contracts for management improvements, as well as contract changes, for prior HUD approval; or

(2) Certify that the contracts accurately reflect HUD-approved work, do not exceed the HUD-approved budget amount, and have received HUD clearance under previous participation procedures.

§ 905.642 Fund requisitions.

To request modernization funds against the total approved modernization budget, the IHA shall submit a request to the HUD office in accordance with HUD requirements.

(Approved by the Office of Management and Budget under control number 2577–0104)

§ 905.645 Progress reporting.

For each quarter until completion of the modernization program, the IHA shall submit, in a form prescribed by HUD, to the HUD field office:

(a) A report on modernization fund obligations and expenditures; and

(b) A narrative report on management improvement progress, where applicable.

(Information collection requirements were approved by the Office of Management and Budget under control number 2577–0049)

§ 905.648 Budget revisions.

The IHA shall not incur any modernization cost in excess of the total approved budget. The IHA shall submit a revision of the budget, in a form prescribed by HUD, if the IHA plans (within the total approved modernization budget) to incur modernization costs in excess of the approved budget amount for any development. The IHA also shall comply with HUD requirements either to:

(a) Submit the proposed budget revision for prior HUD approval if the IHA plans to delete or substantially revise approved work items, add new work items, or incur modernization costs in excess of the approved budget amount for a work item; or

(b) Certify that the revisions are necessary to carry out the approved work and do not result in the approved budget amount for any development being exceeded.

§ 905.651 On-site inspections.

The IHA shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer, to assure work quality and progress.

§ 905.654 Fiscal closeout of a modernization program.

Upon completion of a modernization program, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to the HUD field office for review, audit verification, and approval. The IHA shall immediately remit any excess funds provided by HUD. The audit shall follow the requirements of 24 CFR Part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate indicates that there are still excess funds, the IHA shall remit the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD may direct.

7. 24 CFR part 905, subpart I is amended by adding a new undesignated center heading to follow immediately after § 905.654 and by adding new §§ 905.660, 905.666, 905.667, 905.669, 905.672, 905.675, 905.678, 905.681, 905.684, and 905.687, to read as follows:

Comprehensive Grant Program (For IHAs That Own or Operate 500 or More Indian Housing Units) (250 or More Units Beginning in FFY 1993)

§ 905.660 Purpose.

(a) *Purpose.* (1) The purpose of the Comprehensive Grant program (CGP) under this subpart is:

(i) To provide modernization assistance to IHAs that own or operate a total of 500 or more units of Indian housing (250 or more units beginning in FFY 1993) on a reliable and more predictable basis, to enable them to operate, upgrade, modernize, and rehabilitate Indian housing developments, to ensure their continued availability for low income families as decent, safe, and sanitary rental housing at affordable rents;

(ii) To provide considerable discretion to IHAs to decide the specific improvements, the manner of their execution, and the timing of the expenditure of funds;

(iii) To simplify significantly the program of Federal assistance for capital improvements in Indian housing developments;

(iv) To provide increased opportunities and incentives for more efficient management of Indian housing developments; and

(v) To give IHAs greater control in planning and expending funds for modernization, rehabilitation, maintenance, and improvement of Indian housing developments to benefit low income families.

(2) The purpose of the sections under the undesignated heading entitled, Comprehensive Grant Program (CGP), is to set forth the policies and procedures for the CGP under which IHAs that own or operate a total of 500 or more units of Indian housing (250 or more units beginning in FFY 1993) receive financial assistance on a formula grant basis in accordance with § 905.601 (e) and (f) for the modernization of Indian housing developments.

§ 905.666 Eligible costs.

(a) *General.* An IHA may use financial assistance received under the CGP for the following eligible costs:

(1) Understanding activities described in its approved action plan under § 905.672(d)(5) and its annual statement under § 905.678;

(2) Carrying out emergency work, whether or not the need is indicated in the IHA's approved comprehensive plan (including the action plan) or annual statement;

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

(4) Preparing the comprehensive plan and action plan under § 905.672, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation and monitoring process; and

(5) Carrying out an audit, in accordance with 24 CFR part 44 and § 905.120.

(b) *Demonstration of viability.* Except in the case of emergency work, an IHA shall only expend funds on a development for which the IHA has demonstrated that completion of the improvements and replacements identified in the comprehensive plan will reasonably ensure the long-term physical and social viability of the development at a reasonable cost.

(c) *Physical improvement costs.* Eligible costs included alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 905.603. These mandatory standards may be exceeded only when the IHA determines that it is necessary or highly desirable for the long-term physical and social viability of the individual development. Such development specific work may include property purchases. If demolition or disposition is proposed, the IHA shall comply with 24 CFR part 905, subpart M.

(d) *Costs for Turnkey III and Mutual Help developments*—(1) *Eligible costs.* Eligible physical improvement costs for existing Turnkey III and Mutual Help developments are limited to work items which are not the responsibility of the homebuyer families and which are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, and lead-based paint testing and

abatement. In addition, management improvements are eligible modernization costs for existing homeownership developments. Costs of health and safety work items shall increase the purchase price and amortization period for homebuyer families, in accordance with § 905.602; other eligible costs shall not increase the purchase price and amortization period;

(2) *Ineligible costs.* Nonroutine maintenance or replacements, additions, 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)(2) of this section, an IHA may substantially rehabilitate a Turnkey III development whenever a unit becomes vacant or is occupied by a non-homebuyer family. An IHA that intends to use funds under this paragraph must identify in its needs assessment the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale. In addition, an IHA must demonstrate in its needs assessment that: The proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III program (see subpart G); and the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 905 (Subpart G), and who have demonstrated their intent to be placed into each of the Turnkey III units proposed to be substantially rehabilitated;

(ii) Before an IHA may be approved for the 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 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.

(4) *One-time exception for Mutual Help units.* Notwithstanding the requirements of paragraph (d)(2) of this section, an IHA may use no more than a single CGP grant under this subpart for purposes of substantially rehabilitating a Mutual Help unit, and may do so only with a unit which is at least 10 years old, and which the IHA has identified in its comprehensive plan (including its action plan and annual statement);

(5) The IHA must maintain records by unit of the work carried out under this section to permit HUD to review the extent to which Mutual Help and Turnkey III units have been substantially rehabilitated.

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

(1) Demolition of dwelling units or nondwelling facilities, where the demolition is approved by HUD under 24 CFR part 905 (Subpart M), 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.

(f) *Replacement reserve costs.* (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 IHA in its needs assessments; or

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

(iii) A management improvement requires more funds than the IHA may use under its 10% limit for management improvements, and the IHA 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 IHA 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 IHA's income in the determination of an IHA'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, an IHA must first use its replacement reserve, where funded, to meet emergency needs, before requesting funds from the $75 million reserve. An IHA is not required to use its replacement reserve for natural and other disasters.

(g) *Management improvement costs.* Management improvements that are needed to upgrade the operation of the IHA's developments, sustain physical improvements at those developments or correct management deficiencies identified by the IHA in its comprehensive plan are eligible costs. An IHA's ongoing operating expenses, including direct provision of social services through either contract or force account labor, are ineligible management improvement costs.

(1) *Economic development activities costs.* Economic development activities such as job training, resident employment and resident businesses, for the purposes of carrying out activities related to the eligible management and physical improvements are eligible costs, as approved by HUD. HUD encourages IHAs, to the greatest extent feasible, to hire residents as trainees or employees to carry out the modernization program under this subpart, and to contract with resident-owned businesses for modernization work;

(2) *Resident management costs.* Technical assistance to a resident council or resident management corporation (RMC), as defined in § 905.455, in order to determine the feasibility of the resident management entity or assist in its formation is an eligible cost;

(3) *Resident home ownership costs.* The study of the feasibility of converting rental to homeownership units, as well as the preparation of an application for conversion to ownership, is an eligible cost.

(h) *Drug elimination costs.* Drug elimination activities, involving management or physical improvements are eligible costs, as specified by HUD.

(i) *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) The salaries of nontechnical and technical IHA 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 nonmodernization duties. The IHA 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 budgets);

(2) IHA contributions to employee benefits plans on behalf of nontechnical and technical IHA personnel are eligible costs in direct proportion to the amount of salary charged to the CGP; and

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

(j) *Audit costs.*

(k) *Architectural/engineering and consultant fees.* Fees for planning, preparation of needs assessments and

required documents, detailed design work, preparation of construction and bid documents, lead-based paint testing, etc., are eligible costs.

(l) *Relocation costs.* Relocation costs as a direct result of rehabilitation, demolition or acquisition for a CGP-funded activity are eligible costs, as required by § 905.120.

(m) *Cost limitations.* (1) An IHA shall not use more than a total of 10 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD.

(2) An IHA shall not use more than a total of 7 percent of its annual grant on administrative costs in account 1410, excluding any costs related to in-house lead based paint testing, in-house architectural/engineering (A/E) work, or other special administrative costs required by state, tribal or local law, unless specifically approved by HUD. In the case of an IHA whose jurisdiction covers as unusually large geographic area, an additional two percent of the annual grant may be spent on costs related to travelling to the IHA's developments for CGP-related business, as specifically approved by HUD. (For purposes of this subparagraph, "an unusually large geographic area" means an area served by an IHA whose offices are physically separated from the majority of its developments by distances which require overnight travel and/or travel by air or other commercial carriers, e.g., a statewide IHA with developments in multiple localities; a regional IHA with developments in multiple counties or states; or an Alaska IHA with developments in multiple villages.);

(3) Where the physical or management improvement will benefit programs other than Indian Housing, such as Section 8, local renewal, etc., eligible costs are limited to the amount directly attributable to the Indian Housing Program.

(n) *Ineligible costs.* An IHA (or an RMC acting on behalf of an IHA) shall not make luxury improvements, or carry out any other ineligible activities, as specified by HUD.

§ 905.667 Reserve for emergencies and disasters.

(a) *Emergencies*—(1) *Eligibility for assistance.* An IHA (including an IHA which has been determined by HUD not to be administratively capable under § 905.135) may obtain funds, at any time, for any eligible emergency work item under § 905.102, from the reserve established under § 905.601(b), except that such funds may be provided to an IHA that has the necessary funds available from any of the following sources: under its annual formula allocation under § 905.601 (e) and (f); from other unobligated modernization funds; or from its replacement reserves under § 905.666. An IHA is not required to have an approved comprehensive plan under § 905.672 before it can request emergency assistance from this reserve;

(2) *Procedure.* To obtain emergency funds, an IHA must submit a request, in a form to be prescribed by HUD, which demonstrates that without the requested funds from the set-aside under this section, the IHA 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 IHA's request meets the requirements of paragraph (a)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve;

(3) *Repayment.* An IHA that receives assistance for its emergency needs from the reserve under § 905.601(b) must repay such assistance from its succeeding years' formula allocations, where available. To this extent, HUD shall deduct up to 50 percent of an IHA's succeeding year's formula allocation under § 905.601 (e) and (f) to repay emergency funds previously provided by HUD to the IHA. The remaining balance, if any, shall be deducted from an IHA's succeeding years' formula allocations.

(b) *Natural and other disasters.*

(1) *Eligibility for assistance.* An IHA (including an IHA which has been determined by HUD not to be administratively capable under § 905.135) may request assistance at any time from the reserve under § 905.601(b) for the purpose of permitting the IHA to respond to a natural or other disaster. To qualify for assistance, the disaster must pertain to an extraordinary event affecting only one or a few IHAs, 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 on a larger scale) qualifies for assistance under this paragraph. An IHA may receive funds from the reserve regardless of the availability of other modernization funds or reserves, but only to the extent its needs are in excess of its insurance coverage. An IHA is not required to have an approved comprehensive plan under § 905.672 before it can request assistance from the reserve under § 905.601(b);

(2) *Procedure.* To obtain funding for natural or other disasters under § 905.601(b), an IHA must submit a request, in a form prescribed by HUD, which demonstrates that it meets the requirements of paragraph (b)(1) of this section. HUD will immediately process a request for such assistance and, if it determines that the request meets the requirements under paragraph (b)(1) of this section, it will approve the request, subject to the availability of funds in the reserve;

(3) *Repayment.* Funds provided to an IHA under paragraph (b)(1) of this section for natural and other disasters shall be in the form of a grant, and are not required to be repaid.

§ 905.669 Allocation of assistance.

(a) *Submission of formula characteristics report*—(1) *Formula characteristics report.* In its first year of participation in the CGP, each IHA shall verify and provide data to HUD, in a form and at a time to be prescribed by HUD, concerning IHA and development characteristics, so that HUD can develop the IHA's annual funding allocation under the CGP in accordance with § 905.601 (e) and (f). If an IHA fails to submit to HUD the formula characteristics report by the prescribed deadline, HUD will use the data which it has available concerning IHA and development characteristics for purposes of calculating the IHA's formula share. After its first year of participation in the CGP, an IHA is required to respond to data transmitted by HUD if there have been changes to its inventory from that previously reported, or where requested by HUD;

(2) *IHA Board Resolution.* The IHA must include with its formula characteristics report under paragraph (a)(1) of this section, a resolution adopted by the IHA Board of Commissioners approving the report, and certifying that the data contained in the formula characteristics report are accurate.

(b) *HUD notification of formula amount; appeal rights.*—(1) *Estimated formula amounts.* After HUD determines an IHA's estimated formula allocations under § 905.601 (e) and (f) based upon the IHA, development, and community characteristics, it shall notify the IHA of its estimated formula amount;

(2) *Appeal based upon unique circumstances.* An IHA may appeal in writing HUD's determination of its estimated formula amount within 60 calendar days of the date of HUD's determination on the basis of "unique circumstances." The IHA must indicate how it is unique, and specify the manner in which it is different from all other IHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a

written decision on an IHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the IHA's request for an appeal. HUD shall publish in the Federal Register a description of the facts supporting any successful appeals based upon "unique" circumstances. Any adjustments resulting in a particular FFY from successful appeals under this paragraph shall be made from the subsequent years' appropriation of funds under this part;

(3) *Appeal based upon error.* (i) *Estimated formula amount.* An IHA may appeal in writing HUD's determination of its estimated formula amount within 30 calendar days of the date of HUD's determination on the basis of an error. The IHA must describe the nature of the error, and provide any necessary supporting documentation. HUD shall respond to the IHA's request within 60 calendar days of the date of its receipt of the IHA's request for an appeal. If HUD determines that there are no issues in dispute, it will inform the IHA within the 60-day period. Any adjustment resulting from successful appeals shall be made from the current year's allocation of funds under this subpart. If, however, HUD determines that there are substantial issues in dispute with respect to the appeal, HUD will so inform the IHA within the 30-day period. Any adjustments resulting from successful appeals, in this case, shall be made from the succeeding year's allocation of funds under the CGP;

(ii) *Final formula amount.* An IHA may appeal in writing HUD's determination of its estimated formula amount within 30 calendar days of the date of HUD's determination on the basis of an error. The IHA must describe the nature of the error, and provide any necessary supporting documentation. If HUD determines that there are no issues in dispute, it will inform the IHA within the 60-day period. Any adjustment resulting from successful appeals shall be made from the current year's allocation of funds under this subpart, to the greatest extent feasible;

(c) *IHAs determined not to be administratively capable.* If an IHA is determined by HUD not to be administratively capable in accordance with § 905.135, the ACA, and the Field Office Monitoring of IHAs Handbook 7440.3, or if the IHA fails to meet, or to make reasonable progress toward meeting, the goals established in its management improvement plan under § 905.135, HUD may issue a notice of deficiency or a corrective action order. If the IHA fails to take corrective action in a reasonable period of time as specified by HUD in a corrective action order, pursuant to the procedures established in § 905.687, HUD may declare a breach of the grant agreement with respect to all or some of the IHA's functions so that the IHA or a particular function of the IHA may be administered by another entity; HUD may withhold some or all of the IHA's annual grant; or HUD may take other sanctions authorized by law or regulation. (Copies of HUD Handbook 7440.3 may be obtained by writing to the HUD Regional Office of Indian Programs within the applicant's jurisdiction.)

§ 905.672 Comprehensive plan (including action plan).

(a) *Deadline for submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify IHAs in writing of their formula amount for use in developing their comprehensive plan, including the action plan, and the deadline for submitting a comprehensive plan.

(b)(1) *Resident participation.* An IHA is required to develop, implement, monitor and annually amend portions of its comprehensive plan in consultation with residents of the developments covered by the comprehensive plan, and with democratically elected resident groups. In addition, the IHA must also consult with resident management corporations (RMCs) to the extent that an RMC manages a development covered by the comprehensive plan. The IHA, in partnership with the residents, must develop and implement a process for resident participation which ensures that residents are involved in a meaningful way in all phases of the CGP. Such involvement shall involve implementing the Partnership Process as a critical element of the CGP;

(2) *Establishment of Partnership Process.* The IHA, in partnership with the residents of the developments covered by the plan, and with democratically elected resident groups, must establish a Partnership Process to develop and implement the goals, needs, strategies and priorities identified in the comprehensive plan. After residents have organized to participate in the CGP, they may decide to establish a volunteer advisory group of experts in various professions to assist them in the CGP Partnership Process. The Partnership Process shall be designed to achieve the following:

(i) To assure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the comprehensive plan including, but not limited to, the physical and management needs assessments, viability analysis, action plan, and annual statement. Where necessary, the IHA shall develop and implement capacity building strategies to ensure meaningful resident participation in the CGP. Such technical assistance efforts are eligible CGP costs;

(ii) To enable residents to participate, on an IHA-wide or area-wide basis, in ongoing discussions of the comprehensive plan and strategies for its implementation, and in all meetings necessary to enable meaningful participation.

(3) *Initial notice.* Once HUD notifies an IHA of its estimated funding level, the IHA shall, within 30 calendar days of the date of HUD's notice, provide written notice to each of the democratically elected presidents of resident organizations of the developments covered by the comprehensive plan, concerning: HUD's estimated modernization funding level; a summary of the CGP requirements; the timeframes for completion of the required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under the CGP. This information shall also be made available to residents in written form and, where feasible, within each development;

(4) *Advance meeting for resident groups.* The IHA shall hold, at least three weeks before the public hearing under paragraph (b)(5) of this section, a meeting for residents and resident groups at which the IHA shall provide residents with draft copies of the executive summary, and shall explain the components of the comprehensive plan. The IHA shall make reasonable efforts to provide advance notice to all residents of the date and time of the meeting (in the form of flyers, advertisements, etc.). Residents shall be advised prior to the meeting that the comprehensive plan shall be available for their review at specified locations within the IHA's jurisdiction. The meeting shall be open to all residents and resident groups;

(5) *Public hearing.* The IHA shall hold at least one public hearing, and any appropriate number of additional hearings, to ensure ample opportunity for residents, resident groups, local government officials, and other interested parties, to express their priorities and concerns. The IHA shall make reasonable efforts to provide advance written notice to each resident of the date and time of the public hearing. The IHA shall give full consideration to the comments and

concerns of residents, local government officials, and other interested parties.

(c) *Local governments participation.* An IHA shall consult with appropriate local government officials with respect to the development of the comprehensive plan. In the case of an IHA with developments in multiple jurisdictions, the IHA may meet this requirement by consulting with an advisory group representative of all the jurisdictions. At a minimum, such consultation must include providing such officials with:

(1) Advance written notice of the public hearing required under paragraph (b)(5) of this section;

(2) A copy of the executive summary; and

(3) An opportunity to express their priorities and concerns to ensure due consideration in the IHA's planning process.

(d) *Contents of comprehensive plan.* The comprehensive plan shall identify all of the physical and management improvements needed for an IHA and all of its developments, and that represent needs eligible for funding under § 905.666. The plan shall also include preliminary estimates of the total cost of these improvements. The plan shall set forth general strategies for addressing the identified needs, and highlight any special strategies, such as major redesign or partial demolition of a development, that are necessary to ensure the long-term physical and social viability of the development. Each comprehensive plan shall contain the following elements:

(1) *Executive summary.* An IHA shall include as part of its comprehensive plan an Executive Summary to facilitate review and comprehension by development residents and by the public. The Executive Summary shall include:

(i) A summary of total preliminary estimated costs to address physical needs by each development and management/operations needs IHA-wide;

(ii) A statement by the IHA concerning its overall modernization strategy, and its rationale for the approach and priorities adopted in its comprehensive plan. For example, an IHA's strategy may be that it will focus its resources on addressing its vacant properties before it brings its occupied units up to the modernization standards;

(iii) A statement by the IHA of its plan for development(s) currently funded for comprehensive modernization under the CIAP; and

(iv) A specific description of the IHA's process for maximizing the level of participation by residents during the development, implementation and monitoring of the comprehensive plan, a summary of the general issues raised on the plan by residents and others during the public comment process and the IHA's response to the general issue. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, resident organizations, and other interested parties, upon request.

(2) *Physical needs assessment.* (i) *Requirements.* The physical needs assessment identifies all of the work that an IHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by section 14(e)(1)(A)(ii) of the Act, to comply with lead based paint testing and abatement requirements under § 905.120(i), and to comply with other program requirements under § 905.120. The physical needs assessment is completed without regard to the availability of funds, and shall include the following information with respect to each of an IHA's developments:

(A) A brief summary of the physical improvements necessary to bring each development to a level at least equal to the modernization standards contained in HUD Handbook 7485.2 (Public and Indian Housing Modernization Standards), and to the energy conservation and life-cycle cost-effective performance standards, as required in § 905.603, and to comply with the Lead-Based Testing and Abatement requirements under § 905.120(i), and the relative urgency of need also must be indicated. If the IHA has no physical improvement needs at a particular development at the time it completes its comprehensive plan, it must so indicate. Similarly, if the IHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development) it must so indicate in the summary of physical improvements. (Copies of HUD Handbook 7485.2 may be obtained by writing to HUD Regional Office of Indian Programs within the applicant's jurisdiction.);

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) A preliminary estimate of the cost to complete the physical work;

(D) Any physical disparities between buildings occupied predominantly by one racial or ethnic group and buildings occupied predominantly by other racial or other ethnic groups and, in such cases, the physical improvements required to correct the conditions. This requirement shall apply only to IHAs which are determined, on a case-by-case basis, to be subject to Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968;

(E) In addition, the IHA shall provide the following information:

(*1*) The Mutual Help units that the IHA is proposing for substantial rehabilitation, in accordance with § 905.666(b)(2); and

(*2*) With respect to vacant or non-homebuyer-occupied Turnkey III units and the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 905.666(b)(3).

(ii) *Sources of data.* The IHA shall identify in its needs assessment the sources from which it derived data to develop the physical needs assessment under this paragraph, and shall retain such source documents in its files.

(3) *Management needs assessment.* (i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the IHA and of each viable development so decent, safe and sanitary living conditions will be provided. The management needs assessment shall include the following, with the relative urgency of need indicated:

(A) An identification of the most current needs related to the following areas (to the extent that any of these needs is addressed in a HUD-approved management improvement plan, the IHA may simply include a cross-reference to these documents):

(*1*) The management, financial, and accounting control systems of the IHA;

(*2*) The adequacy and qualifications of personnel employed by the IHA in the management and operation of its developments, for each significant category of employment;

(*3*) The adequacy and efficacy of:

(*i*) Resident programs and services;

(*ii*) Resident and development security;

(*iii*) Resident selection and eviction;

(*iv*) Occupancy;

(*v*) Maintenance;

(*vi*) Resident management and resident capacity building programs;

(*vii*) Resident opportunities for employment and business development and other self-sufficiency opportunities for residents; and

(*viii*) Homeownership opportunities for residents.

(B) Any additional deficiencies identified through audits and HUD monitoring reviews which are not

addressed under paragraph (d)(3)(i)(A) of this section. To the extent that any of these is addressed in a HUD-approved management improvement plan, the IHA may include a cross-reference to these documents;

(C) Any other management and operations needs which the IHA wants to address at the IHA-wide or development level;

(D) An IHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds; and

(E) The projected FFY in which the IHA anticipates that all identified management deficiencies will be corrected.

(ii) *Sources of data.* The IHA shall identify in its needs assessment the sources from which it derived data to develop the management needs assessment under this paragraph, and shall retain such source documents in its files.

(4) *Demonstration of long-term physical and social viability.* (i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (d)(2) and (d)(3) of this section will reasonably ensure the long-term physical and social viability of the development at a reasonable cost;

(ii) *Developments with hard cost of 90 percent or less of TDC.* Where the preliminary estimate of hard cost for work proposed at a development is 90 percent or less of TDC, and the IHA determines that, upon completion of the improvements and replacements under paragraphs (d)(2) and (d)(3) of this section, the development can reasonably be expected to be structurally sound and achieve full occupancy, the IHA may determine that the development has long-term physical and social viability at a reasonable cost;

(iii) *Developments with hard cost of greater than 90 percent of TDC.* Where the preliminary estimate of hard cost for work proposed at a development exceeds 90 percent of TDC, the IHA shall complete and submit to HUD, as part of its comprehensive plan, a viability analysis of the development, as prescribed by HUD. Where the IHA determines that completion of the improvements and replacements identified under paragraphs (d)(2) and (d)(3) of this section, the development can reasonably be expected to be structurally sound and achieve full occupancy, the IHA shall also submit to HUD a request to exceed the 90 percent of TDC. The Field Office shall review such requests on a case-by-case basis, in accordance with the following criteria:

(A) The IHA has adequately explained any special or unusual conditions, justified all work as necessary to meet the modernization and energy conservation standards, provided reasonable cost estimates, and made every effort to reduce costs;

(B) Rehabilitation of the existing development is more cost-effective in the long-term than construction or acquisition of replacement housing; and

(C) The IHA has no practical low-income housing alternative;

(iv) *Determination of non-viability.* Where an IHA's analysis of a development, either under paragraphs (c) or (d) of this section, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the IHA shall not expend CGP funds for the development, except for emergencies. The IHA shall specify in its comprehensive plan the actions it proposes to take with respect to the non-viable development (e.g., demolition or disposition under 24 CFR part 905, subpart M).

(5) *Five-year action plan.* (i) *General.* The comprehensive plan shall include a rolling five-year action plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (d)(2) and (d)(3) of this section. The IHA shall develop the action plan based on estimates provided by HUD of the amount of assistance the IHA will receive annually for a five-year period under § 905.103(e) and (f) (for this purpose, the IHA should assume that the current year level of funding will be available for each year of its five-year plan), and an IHA's estimate of the funds that will be available from other sources, such as State, local and tribal governments. All activities specified in an IHA's action plan are contingent upon the availability of funds;

(ii) *Requirements.* Under the action plan, an IHA must indicate how it intends to use the funds available to it under the CGP to address the deficiencies, or a portion of the deficiencies, identified under its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of an IHA's developments, an IHA must indicate in its action plan how it intends to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical needs assessment so as to bring each of its developments up to a level at least equal to the modernization and energy conservation standards and the projected FFY the IHA anticipates that such standards will be met. This would include specifying the work to be undertaken by the IHA in major work categories (e.g., kitchens, electrical systems, etc.); establishing priorities among the major work categories by development and year based upon the relative urgency of need; and estimating the cost of each of the identified major work categories. In addition, an IHA must estimate the FFY in which it anticipates that the development will meet the modernization and energy conservation standards. In developing its action plan, an IHA shall give priority to the following:

(*1*) Activities required to correct emergency conditions;

(*2*) Activities required to meet statutory (or other legally mandated) requirements;

(*3*) Activities required to meet the needs identified in the Section 504 needs assessment within the regulatory timeframes; and

(*4*) Activities required to complete lead-based paint testing and abatement requirements by December 6, 1994.

(B) *Management and operations.* An IHA must address in its action plan the management and operations deficiencies (or a portion of the deficiencies) identified in its management needs assessment, as follows:

(*1*) With respect to the management and operations needs of the IHA, the IHA must identify how it intends to address with CGP funds, if necessary, the deficiencies (or a portion thereof) identified in its management needs assessment, including work identified through audits, the ACA, HUD monitoring reviews, and self-assessments (this would include establishing priorities based upon the relative urgency of need); and

(*2*) A preliminary IHA-wide cost estimate, by major work category.

(iii) *Procedure for maintaining current five-year action plan.* The IHA shall maintain a current five-year action plan by annually amending its action plan, in connection with the submission of its annual statement, so that the previous year of the existing action plan is eliminated and an additional year is added;

(6) *Local government statement.* The comprehensive plan shall include a statement signed by the chief executive officer of the appropriate governing body (or, in the case of an IHA with developments in multiple jurisdictions,

from the CEO of each such jurisdiction), certifying as to the following:

(i) The IHA developed the comprehensive plan/annual statement in consultation with officials of the appropriate governing body and with development residents covered by the comprehensive plan/annual statement, in accordance with the requirements of § 905.672(b)(3);

(ii) The comprehensive plan/annual statement is consistent with the appropriate governing body's assessment of its low income housing needs and that the appropriate governing body will cooperate in providing resident programs and services; and

(iii) The IHA's proposed drug elimination activities are coordinated with, and supportive of, local drug elimination strategies and neighborhood improvement programs, is applicable.

(7) *IHA resolution.* The plan shall include a resolution adopted by the IHA Board of Commissioners, and signed by the Board Chairman of the IHA, approving the comprehensive plan or any amendments thereto and certifying that:

(i) The IHA will comply with all policies, procedures, and requirements prescribed by HUD for modernization, including implementation of the modernization in a timely, efficient, and economical manner;

(ii) IHA has established controls to assure that any activity funded by the CGP is not also funded by any other HUD program, thereby preventing duplicate funding of any activity;

(iii) The IHA will not provide to any development more assistance under the CGP than is necessary to provide affordable housing, after taking into account other government assistance provided;

(iv) The proposed physical work will meet the modernization and energy conservation standards under 24 CFR 905.603;

(v) The proposed activities, obligations and expenditures in the Annual Statement are consistent with the proposed or approved Comprehensive Plan of the IHA;

(vi) The IHA will comply with applicable civil rights requirements under 24 CFR 905.115, and, where applicable, will carry out the Comprehensive Plan in conformity with title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973;

(vii) The IHA will, to the greatest extent feasible, give preference to the award of modernization contracts to Indian organizations and Indian-owned economic enterprises under 24 CFR 905.165;

(viii) The IHA has provided HUD with any documentation that the Department needs to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 905.120 (a) and (b), and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Statement, until the IHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and other related authorities;

(ix) The IHA will comply with the wage rate requirements under 24 CFR 905.120 (c) and (d);

(x) The IHA will comply with the relocation assistance and real property acquisition requirements under 24 CFR 905.120(e);

(xi) The IHA will comply with the requirements for physical accessibility under 24 CFR 905.120(f);

(xii) The IHA will comply with the requirements for access to records and audits under 24 CFR 905.120(g);

(xiii) The IHA will comply with the uniform administrative requirements under 24 CFR 905.120(h);

(xiv) The IHA will comply with lead-based paint testing and abatement requirements under 24 CFR 905.120(i);

(xv) The IHA has complied with the requirements governing tribal government and resident participation in accordance with 24 CFR 905.672(b), 905.678(b), and 905.684, and has given full consideration to the priorities and concerns of tribal government and residents, including any comments which were ultimately not adopted, in preparing the Comprehensive Plan/Annual Statement and any amendments thereto;

(xvi) The IHA will comply with the special requirements of 24 CFR 905.666(d) with respect to a homeownership development; and

(xvii) The IHA will comply with the special requirements of § 905.633 with respect to a Section 23 leased housing bond-financed development.

(e) *Amendments to the comprehensive plan*—(1) *Extension of time for performance.* An IHA shall have the right to amend its comprehensive plan (including the action plan) to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has not provided the assistance in a timely manner;

(2) *Amendments to needs assessments:* The IHA must amend its plan by revising its needs assessments whenever it proposes to carry out activities in its action plan or annual statement which are not reflected in its current needs assessments (except in the case of emergencies). When the bases for the needs assessment have changed substantially, an IHA may propose an amendment to its needs assessments, in connection with the submission of its annual statement (see § 905.678(b)), or at any other time. These amendments shall be reviewed by HUD in accordance with § 905.675;

(3) *Six-year revision of comprehensive plan.* The physical and management needs assessments, and the executive summary, are required to be revised only every sixth year, although the IHA may elect to revise some or all of these assessments more frequently. Consequently, every sixth year, an IHA must submit to HUD, with its annual statement, a complete revision of its comprehensive plan;

(4) *Annual revision of action plan.* Annually, the IHA shall submit to HUD, with its annual statement, an update of its five-year action plan, eliminating the previous year and adding an additional year;

(5) *Required submissions.* Any amendments to the comprehensive plan under this section must be submitted with the IHA resolution under § 905.672(d)(7).

(f) *Prerequisite for receiving assistance*—(1) *Prohibition of assistance.* No financial assistance, except for emergency work to be funded under §§ 905.601(b) and 905.666(a)(2), and for modernization needs resulting from disasters under § 905.601(b), may be made available under this subpart unless HUD has approved a comprehensive plan submitted by the IHA which meets the requirements of § 905.672. An IHA that has failed to obtain approval of its comprehensive plan by the end of the FFY shall have its formula allocation for that year (less any formula amounts provided to the IHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to IHAs and PHAs participating in the CGP in accordance with the formula under § 905.601 (e) and (f) in the subsequent FFY. An IHA which elects in any FFY not to participate in the CGP under this subpart may participate in the CGP in subsequent FFYs;

(2) *Requests for emergency assistance.* An IHA may receive funds from its formula allocation to address emergency modernization needs where HUD has not approved an IHA's comprehensive plan. To request such

assistance, an IHA shall submit to HUD a request for funds in such form as HUD may prescribe, including any documentation necessary to support its claim that an emergency exists. HUD shall review the request and supporting documentation to determine if it meets the definition of "emergency work," as set forth in § 905.102.

§ 905.675 HUD review and approval of comprehensive plan (including action plan).

(a) *Submission of comprehensive plan.* (1) Upon receipt of a comprehensive plan from an IHA, HUD shall determine whether:

(i) The plan contains each of the required components specified at § 905.672(d); and

(ii) Where applicable, the IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, or civil rights compliance findings.

(2) *Acceptance for review.* If the IHA has submitted a comprehensive plan (including the action plan) which meets the criteria specified in paragraph (a)(1) of this section, HUD shall accept the comprehensive plan for review, within 14 calendar days of its receipt in the field office. The IHA shall be notified in writing that the plan has been accepted by HUD, and that the 75-day review period is proceeding;

(3) *Time period for review.* A comprehensive plan that is accepted by HUD for review shall be considered to be approved unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date of HUD's receipt of the comprehensive plan for review, that HUD has disapproved the plan. HUD shall not disapprove a comprehensive plan on the basis that it cannot complete its review within the 75-day deadline;

(4) *Rejection of comprehensive plan.* If an IHA has submitted a comprehensive plan (including the action plan), which does not meet the requirements of paragraph (a)(1) of this section, HUD shall notify the IHA within 14 calendar days of its receipt that HUD has rejected the plan for review. In such case, HUD shall indicate the reasons for rejection, the modifications required to qualify the comprehensive plan for HUD review, and the deadline date for receipt of any modifications.

(b) *HUD approval of comprehensive plan (including action plan).* (1) A comprehensive plan (including the action plan) that is accepted by HUD for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 days of the date of HUD's receipt of the comprehensive plan for review, that HUD has disapproved the plan, indicating the reasons for disapproval, and the modifications required to make the comprehensive plan approvable. The IHA must re-submit the comprehensive plan to HUD, in accordance with the deadline established by HUD, which may allow up to 75 calendar days before the end of the FFY for HUD review. If the revised plan is disapproved by HUD following its resubmission, or the IHA fails to resubmit the plan by the deadline established by HUD, any funds that would have been allocated to the IHA shall be added to the subsequent year's appropriation of funds for grants under this subpart. HUD shall allocate such funds to IHAs and PHAs participating in the CGP in accordance with the formula under §968.103 (e) and (f). HUD shall not disapprove a comprehensive plan on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) HUD shall approve the comprehensive plan except where it makes a determination in accordance with one or more of the following:

(i) *The comprehensive plan is incomplete in significant matters.* HUD determines that the IHA has failed to include all required information or documentation in its comprehensive plan, e.g., the physical needs assessment does not provide all of the information required by HUD concerning all of its developments; or the IHA has supplied incomplete data on the current condition and other characteristics of its developments;

(ii) *Identified needs are plainly inconsistent with facts and data.* On the basis of available significant facts and data pertaining to the physical and operational condition of the IHA's developments or the management and operations of the IHA, HUD determines that the IHA's identification of modernization needs (see §905.672(d) (2) and (3)) is plainly inconsistent with such facts and data. HUD will take into account facts and data such as those derived from recent HUD monitoring, audits, and resident comments and will disapprove a comprehensive plan based on such findings as:

(A) *Identified physical improvements and replacement are inadequate.* The completion of the identified physical improvements and replacements will not bring all of an IHA's developments to a level at least equal to the modernization and energy conservation and life-cycle cost-effective standards in §905.603 (except that a development must meet the energy conservation standards under §905.603 only when they are applicable to the work being performed);

(B) *Identified management improvements are inadequate.* The identified management and operations improvement needs do not address all of an IHA's areas of deficiency, or the completion of those improvements would not result in each area of deficiency under an IHA's management improvement plan under §905.135 being brought up to an acceptable level of performance under the ACA and the Field Office Monitoring of IHAs Handbook 7440.3; or

(C) *Proposed physical and management improvements fail to address identified needs.* The proposed physical and management improvements in the action plan are not related to the identified needs in the needs assessments portion of the comprehensive plan, e.g., a heating plant renovation is in the action plan, but it was not included in the needs assessment for that development.

(iii) *Action plan is plainly inappropriate to meeting identified needs.* On the basis of the comprehensive plan, HUD determines that the action plan (see § 905.672(d)(5)) is plainly inappropriate to meet the needs identified in the comprehensive plan, e.g., the proposed work item will not correct the need identified in the needs assessment. HUD will take into account the availability of funds. In addition, HUD will take into account whether the action plan fails to address work items that are needed to correct known emergency conditions or which are otherwise needed to meet statutory or other legally mandated requirements, as identified by the IHA in its comprehensive plan;

(iv) *Inadequate demonstration of long-term viability at reasonable cost.* HUD determines that the IHA has failed to demonstrate that completion of improvements and replacements identified in the comprehensive plan, as required by § 905.672(d) (2) and (3), will reasonably ensure long-term viability of one or more Indian housing developments to which they relate at a reasonable cost, as required by § 905.672(d)(4);

(v) *Contradiction of local government statement or IHA resolution.* HUD has evidence which tends to challenge, in a substantial manner, the appropriate governing body's statement or IHA resolution contained in the comprehensive plan, as required in § 905.672(d) (6) and (7). Such evidence may include, but is not necessarily limited to:

(A) Evidence that the IHA failed to implement the Partnership Process and to meet the requirements for resident participation, as set forth in § 905.672(b). In such cases, HUD shall review the IHA's resident participation process and any supporting documentation to determine whether the standards for participation under § 905.672(b) were met;

(B) With respect to an IHA established under state law and determined to be subject to the requirements of title VI of the Civil Rights Act of 1964 and the Fair Housing Act, HUD shall also consider as such evidence the following:

(*1*) A pending proceeding against the IHA based upon a charge of discrimination pursuant to the Fair Housing Act. (For purposes of this provision, "a charge of discrimination" means a charge, pursuant to Section 810(g)(2) of the Fair Housing Act, issued by the HUD General Counsel, or his or her legally authorized designee);

(*2*) A pending civil rights suit against the IHA instituted by the Department of Justice;

(*3*) Outstanding HUD findings of IHA noncompliance with civil rights statutes and executive orders under § 905.120, or implementing regulations, as a result of formal administrative proceedings, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(*4*) A deferral of the processing of applications from the IHA imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD section 504 regulations (24 CFR 8.57). (Copies of HUD Handbook 8040.1 may be obtained by writing to the HUD Regional Office of Indian Programs within the applicant's jurisdiction.); or

(*5*) An adjudication of a violation under any of the authorities under § 905.120(a) in a civil action filed against the IHA by a private individual, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(c) *Effect of HUD approval of comprehensive plan.* After HUD approves the comprehensive plan (including the action plan), or any amendments to the plan, it shall be binding upon HUD and the IHA, until such time as the IHA submits, and HUD approves, an amendment to its plan. If HUD determines as a result of an audit or monitoring findings that an IHA has provided false or substantially inaccurate data in its comprehensive plan, HUD may condition the receipt of assistance, in accordance with § 905.678(d). 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.

§ 905.678 Annual statement of activities and expenditures.

(a) *General.* HUD shall notify IHAs in writing of their estimated formula amount for use in developing the annual statement and an update of the five-year action plan. The annual statement is the first year of the five-year rolling base action plan, and is intended to provide a more detailed discussion of the activities, obligations and expenditures which the IHA plans to undertake, in whole or in part, with the assistance to be provided by HUD. Thus, the annual statement provides HUD, the residents, and the public with greater detail concerning the planned utilization of current year funds, than the remaining years covered by the action plan. An IHA may elect to submit an annual statement which covers up to a two-year period, to enable the IHA to shift work items within the two years of its approved annual statement. Such an IHA is still required to submit a new annual statement every year.

(b) *Submission.* After being advised by HUD of the estimated formula amount of assistance it will receive under this subpart with respect to any FFY, and estimating how much funding will be available from other sources, such as State and tribal governments, the IHA shall submit an annual statement of activities and expenditures and an update of the action plan, in accordance with instructions provided by HUD.

(c) *Acceptance for review.* Since the annual statement constitutes the first year (or, if so elected by an IHA, any period up to two years) of an IHA's rolling base action plan under § 905.672(d)(4), the IHA shall submit its annual statement to HUD at the same time that it submits its amendment to the action plan under § 905.672. Upon receipt of an annual statement from an IHA, HUD shall determine whether:

(1) It is complete in all significant matters; and

(2) The IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, and civil rights compliance findings. If the IHA has submitted a complete annual statement and all required information and assurances, HUD will accept the statement for review, as of the date of receipt. If the IHA has not submitted all required material, HUD will promptly notify the IHA that it has disapproved the statement as submitted, indicating the reasons for disapproval, the modifications required to qualify the annual statement of HUD review, and the date by which such modifications must be received by HUD.

(d) *Resident and local government participation.* An IHA is required to develop its annual statement, including any proposed amendments to its comprehensive plan as provided in § 905.672(d), in consultation with officials of the appropriate governing body (or, in the case of an IHA 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 of the developments covered by the comprehensive plan, as follows:

(1) *Notification.* The IHA will undertake reasonable efforts to provide advance written notice to each of the residents in the affected housing development(s) and to officials of the appropriate governing body, of the date and time of the public hearing under paragraph (d)(3) of this section. In addition, the IHA shall undertake reasonable efforts to provide advance written notice (in the form of flyers, advertisements, etc.) to all residents of the affected housing development(s) by means of advertisements or flyers of any other meetings which the IHA intends to hold, including the meeting with resident groups under paragraph (d)(2) of this section;

(2) *Meeting with resident groups.* The IHA shall hold, at least three weeks before the public hearing under paragraph (d)(3) of this section, a meeting with residents and resident groups at which the IHA will provide residents with information concerning the contents of the IHA's annual statement (and any proposed amendments to the IHA's comprehensive plan to be submitted with the annual statement) so that residents can comment adequately at the public hearing on the contents of the

annual statement and any proposed amendments;

(3) *Public hearing.* The IHA shall hold a public hearing which allows residents of the developments covered by the comprehensive plan, democratically elected resident groups, officials of the appropriate governing body, and other interested parties, an opportunity to summarize their priorities and concerns. The IHA shall give full consideration to the comments and concerns of residents of the affected developments and officials of the appropriate governing body in developing its annual statement, or any amendments to its comprehensive plan (including its updated action plan).

(e) *Contents of annual statement.* The annual statement must include, for each development (or on an IHA-wide basis for management improvements) for which work is to be funded out of that year's grant:

(1) A list of development accounts (e.g., "dwelling structures") with a general description of work items (e.g., "replace kitchen cabinets," "repair bathroom floors");

(2) The cost for each work item, as well as a summary of cost by development account;

(3) The IHA-wide or development-specific management improvements to be undertaken during the year;

(4) For each development and for or any management improvements not covered by a HUD-approved management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds. In general, HUD expects that an IHA will obligate its current year's allocation of CGP funds (except for its funded replacement reserves) within two years, and expend such funds within three years, of the date of HUD approval, unless longer time-frames are approved by HUD due to local differences;

(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 the IHA 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 § 905.120 (a) and (b);

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

(8) An IHA resolution approving the annual statement or any amendments thereto, as set forth in § 905.672(d)(7).

(f) *Additional submissions with annual statement.* An IHA must submit with the annual statement any amendments to the comprehensive plan, as set forth in §905.672(e), and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the comprehensive plan in accordance with the review standards under § 905.675(b).

(g) *HUD review and approval of annual statement.*—(1) *General.* An annual statement accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date that HUD accepts the annual statement for review under paragraph (c) of this section, that HUD has disapproved the annual statement, indicating the reasons for disapproval, the modifications required to make the annual statement approvable, and the date by which such modifications must be received by HUD. HUD shall not disapprove an annual statement on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval of annual statement.* HUD shall approve the annual statement, except where:

(i) *Plainly inconsistent with comprehensive plan.* HUD determines that the activities and expenditures proposed in the annual statement are plainly inconsistent with the IHA's approved comprehensive plan;

(ii) *Contradiction of IHA resolution.* HUD has evidence which tends to challenge, in a substantial manner, the certifications contained in the board resolution, as required by § 905.672(d)(7).

(h) *Amendments to annual statement.* The IHA shall submit to HUD for prior approval any major changes, as defined in § 905.102, except in the case of emergency work. Major changes shall be submitted in the form of an amendment to the IHA's approved annual statement. The IHA shall advise HUD of all changes due to emergencies in its performance and evaluation report submitted under § 905.684. HUD shall review a request to amend an annual statement in accordance with paragraph (f)(2) of this section. Any changes with respect to work items involving cumulatively less than 10% of an IHA's annual grant allocation do not require prior HUD approval, so long as the work is covered under the IHA's action plan. An IHA that has elected to submit an annual statement which covers up to a two year period may undertake without submitting an amendment for prior HUD approval the work items contained in either the first or second year of its annual statement. Such rescheduling of activities is not considered a major change.

(i) *Extension of time for performance.* An IHA may revise the target dates for fund obligation and expenditure in the approved annual statement whenever any valid delay outside the IHA's control occurs, as specified by HUD. Such revision is subject to HUD review and approval under § 905.667(a)(2) as to the IHA's continuing capacity. HUD shall not review as to an IHA's continuing capacity any revisions to an IHA's comprehensive plan and related statements caused by HUD's failure to provide the amount of assistance set forth in the annual statement, or to provide such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's annual statement, HUD and the IHA shall enter into an ACC amendment to obtain modernization funds.

§ 905.681 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved the annual statement and entered into an ACC amendment or grant agreement with the IHA, the IHA shall undertake the modernization activities and expenditures set forth in its approved annual statement, subject to the following requirements:

(1) The IHA may undertake the activities using force account or contract labor, including contracting with an RMC. If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by an RMC, the IHA shall not retain for any administrative or other reason, any portion of the CGP funds provided, unless the IHA and the RMC provide otherwise by contract; and

(2) All activities shall be monitored by resident groups within the framework and intent of the Partnership Process.

(b) *Fund requisitions.* To request modernization funds against the approved annual statement, the IHA shall submit a request to HUD in accordance with requirements to be prescribed by HUD.

(c) *Contracting requirements.* The IHA shall comply with the wage rate requirements in § 905.120. In addition, the IHA shall comply with the requirements, as set forth in subpart B of this part, except as follows:

(1) *Assurance of completion.* For each construction or equipment contract over $25,000, the contractors shall furnish a

performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h) and § 905.170, a 20 percent cash escrow, or a 25 percent letter of credit or, as may be required by law, separate performance and payments bonds, each for 50 percent or more of the contract price;

(2) *Previous participation.* The IHA shall obtain HUD clearance under previous participation procedures for construction or equipment contract awards, over a HUD-specified amount, which shall include verifying that the contractor is not included on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

(d) *Assurance of non-duplication.* The IHA shall ensure that there is no duplication between the activities carried out pursuant to the CGP, and activities carried out with other funds.

(e) *Fiscal closeout of a comprehensive grant.* Upon expenditure by an IHA of all funds, or termination by HUD of the activities funded by each annual grant, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. The audit shall follow the guidelines prescribed by 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD may direct.

§ 905.684 IHA performance and evaluation report.

(a) *Submission.* For any FFY in which an IHA has received assistance under this subpart, the IHA 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 IHA must 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.

(b) *Content.* The report shall include the following:

(1) An explanation of how the IHA has used other funds, such as Community Development Block Grant program assistance, State or tribal assistance, and private funding, for the needs identified in the IHA's comprehensive plan and for the purposes of this subpart;

(2) An explanation of how the IHA has used the CGP funds to address the needs identified in its comprehensive plan and to carry out the activities identified in its approved annual statement, and shall specifically address:

(i) Any funds used for emergency needs not set forth in its annual statement; and

(ii) Any deviations within the 10% cap for "major changes" to the annual statement under § 905.678;

(3) In the case of an IHA that has elected to submit an annual statement which covers up to a two-year period, any deviations in the order of work presented between years one and two of the approved annual statement;

(4) The results of the IHA's process for consulting with residents on the implementation of the plan;

(5) The current status of the IHA's obligations and expenditures and specifying how the IHA is performing with respect to the implementation schedules provided in its approved annual statement, and an explanation of any necessary revisions to the planned target dates;

(6) A summary of resident, tribal or local government comments received on the report; and

(7) A resolution by the IHA Board of Commissioners approving the performance and evaluation report and containing a certification that the IHA has made reasonable efforts to notify residents in the development(s) of the opportunity to review the draft report and to comment on it before its submission to HUD, and that copies of the report were provided to residents in the development office, upon their request.

§ 905.687 HUD review of IHA performance.

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

(i) In making this determination, HUD will review the IHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved annual statement, consistent with the approved comprehensive plan. HUD will also review an IHA's schedules which are provided with its annual statement for purposes of determining whether the IHA has carried out its modernization activities in a timely manner;

(ii) HUD will review an IHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that the work carried out meets the modernization and energy conservation standards in § 905.603, this part, and other applicable laws and regulations.

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

(i) The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity are those described in paragraphs (a)(1) and (a)(3) of this section as they relate to carrying out the comprehensive plan. HUD generally will consider an IHA to have a continuing capacity if it determines that the IHA has:

(A) Carried out its activities under the CGP program, as well as the CIAP, in a timely manner, taking into account the level of funding available and whether the IHA obligates and expends approved modernization funds in accordance with the approved implementation schedule, (except in circumstances beyond the IHA's control);

(B) Adequately inspected the funded modernization to assure that the physical work is being carried out in accordance with the plans and specifications and the modernization and energy conservation standards (or, in the case of an IHA's performance under CIAP, whether the IHA has carried out the physical work in accordance with the HUD-approved budget and in conformance with the modernization and energy conservation standards) and that any HUD monitoring findings relating to the quality of the physical work have been, or are being, resolved);

(C) Established and maintained internal controls for its modernization program in accordance with HUD requirements for financial management and accounting, as determined by the fiscal audit;

(D) Administered its modernization contracts in accordance with a HUD-approved procurement policy, which

meets the requirements of 24 CFR 85.36(a) and § 905.160;

(E) Carried out its activities in accordance with its comprehensive plan and HUD requirements; and

(F) Has satisfied, or made reasonable progress toward satisfying, the performance standards prescribed in paragraph (a)(3) of this section as they relate to activities under the CGP program;

(ii) HUD will give particular attention to IHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

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

(i) With respect to the physical condition of each development, whether the work items being carried out by the IHA are in conformity with the modernization and energy conservation standards in § 905.603, and whether the IHA has brought, or is making reasonable progress toward bringing, all of its developments to these standards, in accordance with its physical needs assessment; and

(ii) With respect to the management condition of the IHA, whether the IHA is making reasonable progress in implementing the work items necessary to eliminate the deficiencies identified in its management needs assessment.

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

(c) *Corrective action order.* (1) Based on HUD reviews of IHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the IHA 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 IHA of the specific program requirements which the IHA has violated, and specifying that any of the corrective actions listed in section (e) 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 IHA 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; and

(4) If HUD orders corrective action by an IHA in accordance with this section, the IHA'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 IHA if it fails to comply with HUD's requirements.

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

(1) The IHA has not submitted a performance and evaluation report, in accordance with § 905.684;

(2) The IHA has not carried out its activities under the CGP program in a timely manner and in accordance with its comprehensive plan or HUD requirements, as described in paragraph (a)(1) of this section;

(3) The IHA does not have a continuing capacity to carry out its comprehensive plan in a timely manner or in accordance with its comprehensive plan or HUD requirements, as described in paragraph (a)(2) of this section;

(4) The IHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph (a)(3) of this section;

(5) An audit conducted in accordance with 24 CFR part 44 and § 905.120, or pursuant to other HUD reviews (including monitoring findings) reveals deficiencies that HUD reasonably believes require corrective action;

(6) The IHA has failed to repay HUD for amounts awarded under the CGP program that were improperly expended; or

(7) The IHA has been determined not to be administratively capable, in accordance with § 905.135.

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

(1) Submit additional information:

(i) Concerning the IHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for a IHA not meeting the standards in paragraph (a)(1), (2), or (3) of this section;

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

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

(iv) Demonstrating that the IHA has a continuing capacity to carry out the comprehensive plan in a timely manner;

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

(3) Notwithstanding 24 CFR 85.36(g), submit to HUD the following documents for prior approval, which may include, but are not limited to:

(i) Proposed agreement with the architect/engineer (prior to execution);

(ii) Complete construction and bid documents (prior to soliciting bids);

(iii) Proposed award of contracts, including construction and equipment contracts and management contracts; or

(iv) Proposed contract modifications prior to issuance, including modifications to construction and equipment contracts, and management contracts.

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's comprehensive plan, annual statement, or performance and evaluation 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;

(7) Take such other corrective actions HUD determines appropriate to correct IHA deficiencies.

(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) Withhold some or all of the IHA's grant;

(2) Declare a breach of the ACC grant amendment with respect to some or all of the IHA's functions; or

(3) Any other sanction authorized by law or regulation.

(g) *Reallocation of funds that have been withheld.* Where HUD has withheld for a prescribed period of time some or all of an IHA's annual grant, HUD may reallocate such amounts to other IHAs/PHAs under the CGP program, subject to approval in appropriations acts. The reallocation shall be made to IHAs which HUD has determined to be administratively

capable under § 905.135, and to PHAs under the CGP program which are not designated as either troubled or mod troubled under the PHMAP at 24 CFR part 901, based upon the relative needs of these IHAs and PHAs, as determined under the formula at § 905.601.

(h) *Right to appeal.* Before withholding some or all of the IHA's annual grant, declaring a breach of the ACC grant amendment, or reallocating funds that have been withheld, HUD will notify the IHA and give it an opportunity, within a prescribed period of time, to present to the Assistant Secretary for Public and Indian Housing any arguments or additional facts and data concerning the proposed action.

(i) *Notification of residents.* The IHA's Board of Commissioners must notify affected residents of HUD's final determination to withhold funds, declare a breach of the ACC grant amendment, or reallocate funds, as well as the basis for, and the consequences resulting from, such a determination.

(j) *Recapture.* In addition, HUD may recapture for good cause any grant amounts previously provided to an IHA, based upon a determination that the IHA has failed to comply with the requirements of the CGP program. Before recapturing any grant amounts, HUD will notify the IHA and give it an opportunity to appeal in accordance with § 905.687(h). Any reallocation of recaptured amounts will be in accordance with § 905.687(g). The IHA's board of Commissioners must notify affected residents of HUD's final determination to recapture any funds.

5–8. Section 905.725 is amended by revising paragraph (e)(1), to read as follows:

§ 905.725 Projected operating income level.

* * * * *

(e) *IHA's estimate of income other than dwelling rental income*—(1) *Investment income.* IHAs with an estimated average cash balance of less than $20,000, excluding investment income earned from a funded replacement reserve under § 905.666(f), shall make a reasonable estimate of investment income for the Requested Budget Year. IHAs with an estimated average cash balance of $20,000 or more, excluding investment income earned from a funded replacement reserve under § 905.666(f), shall estimate interest on general fund investments based on the estimated average yield for 91-day Treasury bills for the IHA's Requested Budget Year (yield information will be provided by HUD. * * *

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9. Section 905.950 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 905.950 Operating subsidy eligibility projects owned by IHAs in Alaska.

(a) The provisions of this subpart N are applicable to the development, modernization, and operation of the Turnkey III and Turnkey IV Homeownership Opportunity Programs and the rental housing owned by the IHAs in the State of Alaska. * * *

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PART 968—PUBLIC HOUSING MODERNIZATION

10. The authority citation for 24 CFR part 968 continues to read as follows:

Authority: Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d, 1437*l*); (sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 968.230 [Redesignated as § 968.102]

11. Section 968.101 is revised, § 968.230 is redesignated as § 968.102, paragraph (a) as redesignated § 968.102 is revised, and a new § 968.103 is added, to read as follows:

§ 968.101 Purpose and applicability.

(a) *Purpose.* Section 14 of the Act established the Public Housing Modernization program, authorizing HUD to provide financial assistance to public housing agencies (PHAs) to improve the physical condition and upgrade the management and operation of existing public housing developments, to assure that such developments continue to be available to serve low income families. These physical and management improvements are authorized under sections 5(c) and 14(b)(2) of the Act, pursuant to the funding method prescribed under section 14(k) of the Act. This part prescribes the requirements and procedures for the Public Housing Modernization program.

(b) *Applicability.* (1) Subpart A of this part applies to all modernization under this part. Subpart B of this part sets forth the requirements and procedures for the Comprehensive Improvement Assistance program (CIAP) for PHAs that own or operate fewer than 500 public housing units (fewer than 250 units beginning in FFY 1993). The PHA that qualifies for participation in the CGP is not eligible to participate in the CIAP. Subpart C of this part sets forth the requirements and procedures for the Comprehensive Grant program (CGP) for PHAs that own or operate 500 or more public housing units (250 or more units beginning in FFY 1993). The PHA that qualifies for participation in the CGP is not eligible to participate in the CIAP. Modernization of housing owned or operated by Indian housing authorities (IHAs) is covered by 24 CFR part 905. For purposes of the 500 or more unit threshold for participation in the CGP (250 or more units beginning in FFY 1993), and for the formula allocation under § 968.103, an existing rental and section 23 bond-financed unit under the ACC shall count as one unit; and a unit under the Turnkey III program shall count as one-fourth of a unit. A unit under the Mutual Help program shall count as one unit. A PHA that has already qualified to participate in the CGP because it owns or operates 500 or more units (250 or more units beginning in FFY 1993), may elect to continue to participate in the CGP so long as it owns or operates at least 200 units;

(2) This part applies to PHA-owned low income public housing developments (including developments managed by a resident management corporation pursuant to a contract with the PHA); conveyed Lanham Act and Public Works Administration (PWA) developments; and to Section 23 Leased Housing Bond-Financed developments. This part also applies to the implementation of modernization program which were approved before FFY 1992. Rental developments which are planned for conversion to homeownership under sections 5(h), 21, or 301 of the Act, but which have not yet been sold by a PHA, continue to qualify for assistance under this part. This part does not apply to developments under the Section 23 Leased Housing Non-Bond Financed program, the Section 10(c) Leased program, or the Section 23 or Section 8 Housing Assistance Payments programs.

(c) *Transition.* Any amount that HUD has obligated to a PHA under the CIAP must be used for the purposes for which the funding was provided, or for purposes consistent with an approved action plan submitted by the PHA under the CGP, as the PHA determines to be appropriate.

§ 968.102 Special requirements for Turnkey III developments.

(a) Promptly after HUD approval of the application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section, except for:

(1) Eligible homeownership costs, as set forth in §§ 968.205(f)(1) and 968.310(d)(1); and

(2) Special purpose modernization of a vacant or non-homebuyer occupied Turnkey III unit pursuant to § 968.205(f)(2), or the substantial rehabilitation of a vacant or non-homebuyer occupied Turnkey III pursuant to § 968.310(d)(3).

* * * * *

§ 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 (i.e., agencies that own or operate fewer than 500 units, or fewer than 250 units beginning in FFY 1993), and to individual PHAs and IHAs participating in the CGP (i.e., agencies that own or operate 500 or more units, or 250 or more units beginning in FFY 1993). The program requirements governing IHA participation in the CIAP and CGP are contained in 24 CFR part 905 (subpart I).

(b) *Set-aside for disasters and emergencies for CGP agencies.* For each FFY, HUD shall reserve from amounts approved in the appropriations act for grants under this part, $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to PHAs under 24 CFR part 968 (subpart C) and to IHAs with 500 or more units (250 or more units beginning in FFY 1993) under 24 CFR part 905 (subpart I), for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY so that it always begins with a $75 million balance. Any unused funds from previous years will 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 § 968.312.

(c) *Set-aside for credits for mod troubled PHAs under subpart C of this part*—(1) *General.* After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside no more than five percent of the remaining amount 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 such PHAs for amounts not allocated by HUD because of their prior designation as a mod troubled agency;

(2) *Non-applicability to IHAs.* Since the PHMAP performance indicators under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed "mod troubled" for purposes of the CGP. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(a) of the Act, nor do they participate in the set-aside of credits established under paragraph (c)(1) 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.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(4) of this section are statistically reliable for individual IHAs and PHAs with 500 or more units (250 or more units beginning in FFY 1993), or the aggregate of IHAs and PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993), 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 500 or more units (250 or more units beginning in FFY 1993), 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 paragraphs (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) *Deduction for prior modernization:* HUD shall deduct from the estimated backlog need, as determined under either paragraphs (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

[1] In 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.

(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.

(4) *Categories of backing need.* The most recently available data used under either paragraphs (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.* 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 500 or more units (250 or more units beginning in FFY 1993), and for the aggregate of PHAs and IHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993), 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 500 or more units (250 or more units beginning in FFY 1993), 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 backlog 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 500 or more units (250 or more units beginning in FFY 1993). (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.

(g) *Allocation of CIAP.* The formula amount determined under paragraphs (e) and (f) of this section for PHAs and IHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993) 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 905 (subpart I, the CIAP).

(h) *Allocation for CGP.* The formula amount determined under paragraphs (e) and (f) of this section for PHAs with 500 or more units (250 or more units beginning in FFY 1993) 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 905 (subpart I, the CGP). 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 § 968.315(b)(2). A PHA which is eligible to receive modernization funds under the CGP because it owns or operates 500 or more units (250 or more units beginning in FFY 1993), 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.

(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) New units which are added to a PHA's or IHA's inventory (or increases resulting from the conversion of existing units) will be added to the overall unit count so long as they are covered by an ACC amendment as of the first day of the FFY in which the formula is being run. Any increase in ACC units as of the beginning of the FFY, including increases as a result of conversion, shall result in an adjacent upwards in the number of units under the formula. New units added to the ACC after this date will be counted for formula purposes as of the following FFY;

(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 program will result in an automatic (rather than a phased-in) reduction in the unit count.

(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.

12. Section 968.105 is amended by adding the following new definitions, to read as follows:

§ 968.105 Definitions.

* * * * *

Development. The term "development" has the same meaning as that provided for "low-income housing project," as that term is defined in section 3(b)(1) of the Act.

* * * * *

Force account labor. Labor employed directly by the PHA on either a permanent or a temporary basis. Under Section 107(d) of the ACC, use of force account labor requires prior HUD approval.

Hard costs. The physical improvement costs in development accounts 1450 through 1475 of the Low-Rent Housing Accounting Handbook 7510.1, as revised, which include: Account 1450 Site Improvements; Account 1460 Dwelling Structures; Account 1465.1 Dwelling Equipment—Nonexpendable; Account 1470 Nondwelling Structures; and Account 1475 Nondwelling Equipment.

* * * * *

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements.

Non-routine maintenance. Work items that ordinarily would be performed on a regular basis in the course of upkeep of property, but have become substantial in scope because they have been put off, and involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

* * * * *

Soft costs. The non-physical improvement costs which exclude any costs in development accounts 1450 through 1475.

13. Section 968.110 is amended by adding a new paragraph (m) to read as follows:

§ 968.110 Other program requirements.

* * * * *

(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.

14. Section 968.115 is amended by revising paragraphs (a) and (b), to read, as follows:

§ 968.115 Modernization and energy conservation standards.

(a) All improvements funded under this part, which may include alterations, betterments, additions, replacements, or non-routine maintenance, shall meet the HUD modernization standards described in paragraph (b) of this section and to comply with lead-based paint testing and abatement requirements in § 968.110(k) and established to provide decent, safe, and sanitary living conditions in PHA-owned and PHA-operated public housing. All improvements funded under this part shall meet the HUD-energy conservation standards for cost-effective energy conservation measures in such developments, described in paragraphs (c) and (d) of this section.

(b) The modernization standards are comprised of both mandatory and development-specific standards. The mandatory standards are intended to provide decent, safe, and sanitary living conditions in public housing, including corrections of violations of basic health and safety codes, and to address all deficiencies, including those related to deferred maintenance. The development-specific standards permit a PHA to undertake improvements that are necessary or highly desirable for the long-term physical and social viability of a development, which include site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standard, and in other documents cited in the Handbook. (Copies of the handbook may be obtained from the PHA's local HUD field office.)

* * * * *

15. The heading of subpart B of part 968 is revised to read as follows:

Subpart B—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer Than 500 Public Housing Units) (Fewer than 250 Units Beginning in FFY 1993)

16. Section 968.201 is revised to read as follows:

§ 968.201 Purpose.

The purpose of this subpart is to set forth the policies and procedures for the CIAP under which PHAs that own or operate fewer than a total of 500 units of public housing (fewer than 250 units beginning in FFY 1993) receive financial assistance for the modernization of public housing developments, including comprehensive, emergency, homeownership, lead-based paint, and special purpose modernization. Funding for this program is provided under section 5(c) of the Act, pursuant to section 14(k) of the Act (see § 968.103 for the formula allocation process for the aggregate of CIAP agencies under this subpart).

17. Section 968.203 is amended by revising the introductory text, and by adding a new paragraph (6), to the definition of "special purpose modernization," and by removing the word "and" at the end of paragraph (4) and by revising the period at the end of paragraph (5) to read "; and", to read as follows:

§ 968.203 Definitions.

* * * * *

Special purpose modernization. A modernization program for a development that is limited to any one or more of the following types of physical and management

improvements otherwise eligible for CIAP funding under this part, subject to a HUD determination that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, beyond that which it would have if such improvements were not made (examples cited in each category are for illustration only):

* * * * *

(6) *Special purpose management modernization.* Management improvements for Mutual Help, Turnkey III and rental developments.

* * * * *

18. Section 968.205 is amended by revising the introductory text of paragraph (b)(1), by revising paragraph (b)(1)(i), by adding a new paragraph (b)(3), and by revising paragraph (f), to read as follows:

§ 968.205 Eligible costs.

* * * * *

(b) *Management improvement costs*—(1) *Eligibility.* Management improvements that are development-specific or PHA-wide in nature are eligible costs only under special purpose management modernization under paragraph (b)(3) of this section, or under comprehensive modernization, subject to all of the following conditions:

(i) The management improvements are necessary to correct identified management problems and to sustain the physical improvements at the development to be comprehensively modernized, or pursuant to special purpose modernization, as set forth in this section;

* * * * *

(3) *Special purpose management modernization.* Special purpose management improvements are eligible modernization costs under the category of special purpose modernization, if they address needs which are not otherwise eligible for assistance under paragraph (b)(1) of this section.

* * * * *

(f) *Turnkey III developments*—(1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items which are not the responsibility of the homebuyer families and which are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, and lead-based paint testing and abatement. In addition, management improvements are eligible modernization costs for existing Turnkey III developments under § 968.205(b)(3). Nonroutine maintenance or replacements, additions, and items that are the responsibility of the homebuyer families are ineligible modernization costs for homeownership developments. The cost of health and safety work items shall increase the purchase price and amortization period for homebuyer families; other eligible costs shall not increase the purchase price and amortization period;

(2) *Exception for vacant or non-homebuyer-occupied Turnkey III units.* Notwithstanding the requirements of paragraph (f)(1) of this section, a PHA may carry out special purpose modernization in a Turnkey III development whenever a Turnkey III unit becomes vacant or is occupied by a non-homebuyer family. A PHA that intends to use funds under this paragraph must identify in its application the estimated number of units that the PHA is proposing for special purpose modernization and subsequent sale. In addition, the PHA must demonstrate in its application that: the proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III program (see 24 CFR part 904); and the PHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 904, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed for special purpose modernization. Before a PHA may be approved for the special purpose modernization 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 special purpose modernization under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its selling price.

* * * * *

19. Section 968.210 is amended by removing paragraph (e)(3), by redesignating paragraph (e)(4) as paragraph (e)(3), and by revising paragraphs (f), (g) introductory text and the first sentence of (g)(2), to read as follows:

§ 968.210 Procedures for obtaining approval of a modernization program.

* * * * *

(f) *Joint review.* If determined necessary by HUD, the PHA and HUD may conduct a joint review to discuss the proposed modernization program, as set forth in the application, and reach tentative agreement on the PHA needs. The joint review may include the on-site inspection of the property and resolution of the relevant issues, as prescribed by HUD.

(g) *Comprehensive modernization.* HUD will fund proposed comprehensive modernization in one stage, or, on an exception basis, in more than one stage, subject to future fund availability. Grounds for exception include a PHA's lack of modernization or management capability (which necessitates multistage funding).

* * * * *

(2) *Multi-stage funding.* Under multi-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved in the fewest number of stages that are feasible, over several different FFYs. * * *

* * * * *

20. Section 968.236 is revised to read as follows:

§ 968.236 Additional limitations for special purpose modernization.

(a) For each of the three types of special purpose modernization relating to major equipment systems or structural elements, security, and reduction of vacant, substandard units, a PHA may obtain special purpose modernization funding only once for a development that has not been comprehensively modernized, except as provided in § 968.205(f)(2) for the special purpose modernization of vacant or non-homebuyer occupied Turnkey III units. Subsequent funding for the same development for any additional physical improvements of these types may be provided only as a part of a program that addresses all of the physical and management improvement needs of the development under a comprehensive modernization program. This limitation does not apply to a development that has been comprehensively modernized.

(b) Special purpose modernization to reduce the number of vacant, substandard units will be limited to physical improvements that are necessary to meet local code requirements and return such units to a condition that is comparable to the condition of occupied units in the same development, except as provided in § 968.205(f)(2).

21. In part 968, a new Subpart C is added to read as follows:

Subpart C—Comprehensive Grant Program (For PHAs That Own or Operate 500 or More Public Housing Units) (250 or More Units Beginning in FFY 1993)

Sec.
968.301 Purpose.
968.305 Definitions.
968.310 Eligible costs.
968.312 Reserve for emergencies and disasters.
968.315 Allocation of assistance for troubled and non-troubled PHAs
968.320 Comprehensive plan (including action plan).
968.325 HUD review and approval of comprehensive plan (including action plan).
968.330 Annual statement of activities and expenditures.
968.335 Conduct of modernization activities.
968.340 PHA performance and evaluation report.
968.345 HUD review of PHA performance.

Subpart C—Comprehensive Grant Program (For PHAs That Own or Operate 500 or More Public Housing Units) (250 or More Units Beginning in FFY 1993)

§ 968.301 Purpose.

(a) The purpose of the Comprehensive Grant program (CGP) under this subpart is:

(1) To provide modernization assistance to PHAs that own or operate a total of 500 or more units of public housing (250 or more units beginning in FFY 1993) on a reliable and more predictable basis to enable them to operate, upgrade, modernize, and rehabilitate public housing developments, to ensure their continued availability for low income families as decent, safe, and sanitary rental housing at affordable rents;

(2) To provide considerable discretion to PHAs to decide the specific improvements, the manner of their execution, and the timing of the expenditure of funds;

(3) To simplify significantly the program of Federal assistance for capital improvements in public housing developments;

(4) To provide increased opportunities and incentives for more efficient management of public housing developments; and

(5) To give PHAs greater control in planning and expending funds for modernization, rehabilitation, maintenance, and improvement of public housing developments to benefit low income families.

(b) The purpose of this subpart is to set forth the policies and procedures for the CGP under which PHAs that own or operate a total of 500 or more units of public housing (250 or more units beginning in FFY 1993) receive financial assistance on a formula grant basis in accordance with § 968.103 (e) and (f) for the modernization of public housing developments.

§ 968.305 Definitions.

In addition to the definitions in § 968.105, the following definitions apply to this subpart:

Action plan. A plan of the actions to be funded by a PHA over a period of five years (including a PHA's proposed allocation of its modernization funds to a reserve established under § 968.310(a)(3)) to make the necessary physical and management improvements identified in the PHA's comprehensive plan. The plan shall be based upon HUD's and the PHA's best estimates of the funding reasonably expected to become available under the next five-year period. The action plan is updated annually to reflect a rolling five-year base. (See § 968.320(d)(5).)

Annual statement. A statement submitted annually by a PHA to HUD of the activities and related costs it expects to fund with the annual grant. A PHA may also elect to submit an annual statement covering work proposed for up to a two-year period so that it can increase its flexibility in carrying out work items during the coming year. (See § 968.330.)

Chief executive officer (CEO). The CEO of a unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the CEO of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of a unit of general local government (e.g., city manager).

Comprehensive grant number. A grant number which is unique to each annual statement, covering the improvements to one or more existing public housing developments.

Comprehensive plan. A plan prepared by a PHA and approved by HUD setting forth all of the physical and management improvement needs of the PHA and its public housing developments, indicating the relative urgency of needs and which includes the PHA's action plan, cost estimates, and required local government and PHA certifications. The comprehensive plan may be revised, as necessary, but must be revised at least every sixth year. (See § 968.320(d).)

Emergency work. Physical work items of an emergency nature, posing an immediate threat to the health or safety of residents, which must be completed within one year of CGP funding. Management improvements are not eligible as emergency work and, therefore, must be covered by the comprehensive plan (including the action plan) before the PHA may carry them out.

Homebuyer agreement. A Turnkey III Homebuyer Ownership Opportunity Agreement or a Mutual Help and Occupancy Agreement.

Improvement plan. A document developed by the PHA and approved by HUD specifying the actions to be taken, including timetables, to correct deficiencies identified as a result of an assessment, either under PHMAP or pursuant to HUD monitoring or audit findings.

Major changes. Major changes means additions, deletions or modifications of work items cumulatively totaling 10 percent or more of a PHA's annual grant allocation, excluding emergencies. Major changes require prior HUD approval. Any changes with respect to work items cumulatively totaling less than 10 percent of a PHA's annual grant allocation, excluding emergencies, do not require prior HUD approval, so long as the work is covered under the PHA's action plan. (See § 968.330(h).)

Memorandum of Agreement (MOA). A binding contractual agreement between HUD and a troubled PHA, or a mod troubled PHA, which is designed to bring about significant, expeditious and long-lasting improvements in the PHA's management of its PHA-owned units. A MOA is required for each PHA designated as troubled or mod troubled.

Partnership Process. A specific and ongoing process that is designed to ensure that residents and the PHA work in a cooperative and collaborative manner to develop, implement and monitor the CGP. At a minimum, the PHA shall ensure that this Partnership Process incorporates full resident participation in each of the required program components.

PHMAP. The Public Housing Management Assessment Program (PHMAP) is a process designed to allow HUD and the PHA to identify PHA management capabilities and deficiencies, and to lead to overall better management of the public housing program, in accordance with 24 CFR part 901.

Resident groups. Democratically elected resident groups such as PHA-wide resident groups, area-wide

resident groups, single development resident groups, or RMCs.

Substantial rehabilitation. A modernization program for a development which provides for all physical and management improvements needed to meet the modernization and energy conservation standards and to ensure its long-term physical and social viability.

§ 968.310 Eligible costs.

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

(1) Undertaking activities described in its approved action plan under § 968.320(d)(5), and its annual statement under § 968.330;

(2) Carrying out emergency work, whether or not the need is indicated in the PHA's approved comprehensive plan (including the action plan) or annual statement;

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

(4) Preparing the comprehensive plan and action plan under § 968.320, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation and monitoring process; and

(5) Carrying out an audit, in accordance with 24 CFR part 44 and § 968.110(i).

(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 demonstrated that completion of the improvements and replacements identified in the comprehensive plan will reasonably ensure the long-term physical and social viability of the development at a reasonable cost.

(c) *Physical improvement costs.* 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 only when the PHA determines that it is necessary or highly desirable for the long-term physical and social viability of the individual development. If demolition or disposition is proposed, the PHA shall comply with 24 CFR part 970.

(d) *Costs for Turnkey III developments*—(1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items which are not the responsibility of the homebuyer families and which are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, and lead-based paint testing and abatement. In addition, management improvements are eligible modernization costs for existing Turnkey III developments. Costs of health and safety work items shall increase the purchase price and amortization period for homebuyer families; other eligible costs shall not increase the purchase price and amortization period;

(2) *Ineligible costs.* Nonroutine maintenance or replacements, additions, 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. A PHA that intends to use funds under this paragraph must identify in its needs assessment the estimated number of units that the PHA is proposing for substantial rehabilitation and subsequent sale. In addition, a PHA must demonstrate in its needs assessment that: the proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III program (see 24 CFR part 904); and the PHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 904, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed to be substantially rehabilitated;

(ii) Before a PHA may be approved for the 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 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;

(iii) The PHA must maintain records by unit of the work carried out under this section to permit HUD to review the extent to which Turnkey III units have been substantially rehabilitated.

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

(1) Demolition of dwelling units or nondwelling 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.

(f) *Replacement reserve costs.* (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 is 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 10% limit for management improvements 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 $75 million reserve. A PHA is not required to use its replacement reserve for natural and other disasters.

(g) *Management improvement costs.* Management improvements that are needed to upgrade the operation of the PHA's developments, sustain physical improvements at those developments or correct management deficiencies identified by the PHA in its comprehensive plan are eligible costs. A PHA's ongoing operating expenses, including direct provision of social services through either contract or force account labor, are ineligible management improvement costs.

(1) *Economic development activities costs.* Economic development activities such as job training, resident employment and resident businesses, for the purpose of carrying out activities

related to the eligible management and physical improvements are eligible costs, as approved by HUD. HUD encourages PHAs, to the greatest extent feasible, to hire residents as trainees or employees to carry out the modernization program under this subpart, and to contract with resident-owned businesses for modernization work;

(2) *Resident management costs.* Technical assistance to a resident council or resident management corporation (RMC), as defined in § 964.7 of this chapter, in order to determine the feasibility of the resident management entity or assist in its formation is an eligible cost;

(3) *Resident homeownership costs.* The study of the feasibility of converting rental to homeownership units, as well as the preparation of an application for conversion to homeownership, is an eligible cost.

(h) *Drug elimination costs.* Drug elimination activities involving management or physical improvements are eligible costs, as specified by HUD.

(i) *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) The salaries of nontechnical 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 nonmodernization duties. The 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 budgets);

(2) PHA contributions to employee benefit plans on behalf of nontechnical and technical PHA personnel are eligible costs in direct proportion to the amount of salary charged to the CGP; and

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

(j) *Audit costs.*

(k) *Architectural/engineering and consultant fees.* Fees for planning, preparation of needs assessments and required documents, detailed design work, preparation of construction and bid documents, lead-based paint testing, etc., are eligible costs.

(l) *Relocation costs.* Relocation costs as a direct result of rehabilitation, demolition or acquisition for a CGP-funded activity are eligible costs, as required by § 968.110(g).

(m) *Cost limitations.* (1) A PHA shall not use more than a total of 10 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD;

(2) A PHA shall not use more than a total of 7 percent of its annual grant on administrative costs in account 1410, excluding any costs related to in-house lead-based paint testing, in-house architectural/engineering (A/E) work, or other special administrative costs required by State or local law, unless specifically approved by HUD. In the case of a PHA whose jurisdiction covers an unusually large geographic area, an additional two percent of the annual grant may be spent on costs related to travelling to the PHA's developments for CGP-related business, as specifically approved by HUD. For purposes of this paragraph, "an unusually large geographic area" is an area served by a PHA whose offices are physically separated from the majority of its developments by distances which require overnight travel and/or travel by air or other commercial carrier, e.g., a State-wide PHA with developments in multiple localities, or a regional PHA with developments in multiple counties or states; or an Alaska IHA with developments in multiple villages;

(3) Where the physical or management improvement will benefit programs other than Public Housing, such as Section 8, local renewal, etc., eligible costs are limited to the amount directly attributable to the Public Housing Program.

(n) *Ineligible costs.* A PHA (or an RMC acting on behalf of a PHA) shall not make luxury improvements, or carry out any other ineligible activities, as specified by HUD.

§ 968.312 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, from the reserve established under § 968.103(b), except that such funds may not be provided to a PHA that has the necessary funds available from any of the following sources: from its annual formula allocation under § 968.103 (e) and (f); from other unobligated modernization funds; or from its replacement reserves under § 968.310(a)(3). A PHA is not required to have an approved comprehensive plan under § 968.320 before it can request emergency assistance from this reserve;

(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 PHA that receives assistance for its emergency needs from the reserve under § 968.103(b) must repay such assistance from its succeeding years' formula allocations, where available. To this extent, 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.

(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 on a larger scale) qualifies for assistance under this paragraph. A PHA may receive funds from the reserve regardless of the availability of other modernization funds or reserves, but only to the extent that its needs are in excess of its insurance coverage. A PHA is not required to have an approved comprehensive plan under § 968.320 before it can request assistance from the reserve under § 968.103(b);

(2) *Procedure.* To obtain funding for natural or other disasters under § 968.103(b), a PHA must submit a request, in a form to be prescribed by HUD, which demonstrates that the PHA meets the requirements of paragraph (b)(1) of this section. HUD will immediately process a request for such assistance and, if it determines that the request meets the requirements under paragraph (b)(1) of this section, it shall

approve the request, subject to the availability of funds in the reserve;

(3) *Repayment.* Funds provided to a PHA under § 968.103(b) for natural and other disasters shall be in the form of a grant, and are not required to be repaid.

§ 968.315 Allocation of assistance for troubled and non-troubled PHAs.

(a) *Submission of formula characteristics report*—(1) *Formula characteristics report.* In its first year of participation in the CGP, each PHA shall verify and provide data to HUD, in a form and at a time to be prescribed by HUD, concerning PHA and development characteristics so that HUD can develop the PHA's annual funding allocation under this subpart, in accordance with § 968.103 (e) and (f). If a PHA fails to submit to HUD the formula characteristics report by the prescribed deadline, HUD will use the data which it has available concerning PHA and development characteristics for purposes of calculating the PHA's formula share. After its first year of participation in the CGP, a PHA is not required to submit formula characteristics data to HUD, but is required to respond to data transmitted by HUD if there have been changes to its inventory from that previously reported, or where requested by HUD;

(2) *PHA Board Resolution.* The PHA must include with its formula characteristics report under paragraph (a)(1) of this section, a resolution adopted by the PHA Board of Commissioners approving the report, and certifying that the data contained in the formula characteristics report are accurate.

(b) *HUD notification of formula amount; appeal rights*—(1) *Estimated formula amounts.* After HUD determines a PHA's estimated formula allocations under § 968.103 (e) and (f) based upon the PHA, development and community characteristics, it shall notify the PHA of its estimated formula amount;

(2) *Appeal based upon unique circumstances.* A PHA may appeal in writing HUD's determination of its estimated formula amount within 60 calendar days of the date of HUD's determination on the basis of "unique circumstances." The PHA must indicate how it is unique, and specify the manner in which it is different from all other PHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on a PHA's appeal under this paragraph within 60 calender days of the date of its receipt of the PHA's request for an appeal. HUD shall also publish in the Federal Register a description of the facts supporting any successful appeals based upon "unique" circumstances. Any adjustments to the formula allocation resulting from successful appeals under this paragraph shall be made from the subsequent years' appropriation of funds under this part;

(3) *Appeal based upon error*—(i) *Estimated formula amount.* A PHA may appeal in writing HUD's determination of its estimated formula amount within 30 calendar days of the date of HUD's determination on the basis of an error. The PHA must describe the nature of the error and provide any necessary supporting documentation. HUD shall respond to the PHA's request within 60 calendar days of the date of its receipt of the PHA's request for an appeal. If HUD determines that there are no issues in dispute, it will so inform the PHA within 60-day period. Any adjustment resulting from successful appeals shall be made from the current year's allocation of funds under this subpart. If, however, HUD determines that there are issues in dispute with respect to the appeal, HUD will so inform the PHA within the 60-day period. Any adjustment resulting from successful appeals, in this case, shall be made from the succeeding year's allocation of funds under this subpart;

(ii) *Final formula amounts.* A PHA may appeal in writing HUD's determination of its final formula amount within 30 calendar days of the date of HUD's determination on the basis of an error. The PHA must describe the nature of the error and provide any necessary supporting documentation. If HUD determines that there are no issues in dispute, it will so inform the PHA within the 60-day period. Any adjustment resulting from successful appeals shall be made from the current year's allocation of funds under this subpart, to the greatest extent feasible.

(c) *Reduced formula allocation for PHAs designated as mod troubled under PHMAP*—(1) *Notification.* After a PHA is designated as a mod troubled agency under PHMAP (24 CFR part 901), HUD shall inform the PHA that its funding may be limited under this subpart because of its designation as a mod troubled PHA. HUD shall also provide the PHA with information concerning the PHA's funding levels for CGP, CIAP and MROP for each of the preceding three FFYs for purposes of determining the PHA's reduced formula allocation, in accordance with paragraph (c)(2)(ii) of this section. In addition, HUD will provide the PHA with information on, or an estimate of, its full formula allocation under § 968.103 (e) and (f), and the amount which represents 25 percent of the difference between the average amounts provided to the PHA in each of the preceding three FFYs and its full formula allocation.

(2) *Calculation of funding for mod troubled PHAs.* HUD shall calculate the funding level for mod troubled PHAs in accordance with paragraph (c)(1) of this section in the following manner:

(i) The average of the amount that the mod troubled PHA received for modernization activities under this part, and for Major Reconstruction of Obsolete Projects (MROP), for each of the preceding three FFYs, which average shall be adjusted to take into account changes in the cost of rehabilitating property based upon the Means Construction Cost Index; plus

(ii) Twenty five percent of the difference between the amount determined under paragraph (c)(1)(i) of this section, and the amount that would have been allocated to the PHA for the FFY if it were not designated as a mod troubled PHA.

(3) *Right of appeal.* The notice under paragraph (c)(1) of this section shall also specify that a PHA may petition HUD within 30 calendar days of its receipt of HUD's notice to increase the amount of its fund allocation. HUD shall determine whether to increase the amount of assistance to be provided a PHA under this paragraph based upon the PHA's demonstrated progress in meeting goals and targets set forth in the PHA's Memorandum of Agreement (MOA) under PHMAP, and toward achieving satisfactory performance under the mod troubled indicator/standard under PHMAP. In its appeal request, a PHA must specify how it is achieving or making progress toward achieving the goals and objectives set forth in the MOA. The request must be submitted to HUD within 30 calendar days of the date of HUD's notice under this paragraph. HUD shall render a decision in writing on the PHA's request within 60 calendar days of the date of its receipt of the PHA's appeal and any supporting documentation.

(4) *Maximum alllowable allocation to mod troubled PHAs.* The maximum amount that HUD may provide to a PHA under this paragraph is the amount that would have been allocated to the PHA for the FFY if it had not been designated as a mod troubled PHA under PHMAP. Where the full formula allocation is less than the average of funding received by the PHA for modernization and MROP for each of the preceding three FFYs, the PHA will receive its full formula amount, and not its average funding level for the preceding three FFYs, plus

25 percent of the difference between that figure and its full formula amount.

(5) *Reallocation of funds withheld from mod troubled PHAs.* Any amounts which are not provided to a PHA under paragraph (c)(1) of this section because the PHA is designated as a mod troubled agency under PHMAP, shall be reallocated by HUD to other PHAs under this subpart which are not designated as either troubled or mod troubled agencies under PHMAP, and to IHAs with 500 or more units (250 or more units beginning in FFY 1993) under 24 CFR part 905 (subpart I) which have been determined to be administratively capable, in accordance with § 905.135, the ACA, and the Field Office Monitoring of IHAs Handbook. Such funds shall be reallocated in the same FFY based upon the relative needs of these PHAs and IHAs, as determined under the formula.

(6) *Credits for PHAs designated as mod troubled*—(i) *Accrual of credits.* A PHA that has received a reduced formula allocation under paragraph (c)(1) of this section because it was designated as a mod troubled agency under PHMAP may accrue credits under this paragraph, for up to three consecutive FFYs, representing the difference between:

(A) The amount the PHA would have been allocated for the FFY under § 968.103(e) and (f) if it were not designated as a mod troubled PHA under PHMAP; and

(B) The reduced funding amount actually provided to the PHA under paragraph (c)(2) of this section because it was designated as a mod troubled PHA under PHMAP.

(ii) *Failure to remove mod troubled designation.* After a three-year period during which the mod troubled PHA has accrued credits under paragraph (c)(6)(i) of this section, the credits accrued by the PHA shall be:

(A) Decreased by 10 percent of the total accumulated credits if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the first FFY following the three-year accrual period;

(B) Decreased by an additional 20 percent of the original total accumulated credits if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the second FFY following the three-year accrual period;

(C) Decreased by an additional 30 percent of the original total accumulated credits if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the third FFY following the three-year accrual period; and

(D) Eliminated if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the fourth FFY following the three-year accrual period.

(iii) *Obtaining credits.* HUD shall reserve under § 968.103(c) up to five percent of the total formula funds available for allocation in any FFY for the purpose of providing PHAs that were formerly designated as mod troubled PHAs under PHMAP with additional assistance after HUD determines that a PHA is no longer a mod troubled agency. HUD shall make the determination that a PHA is no longer a mod troubled agency based upon its achieving satisfactory performance under the mod indicator/standard that was initially used to designate the agency as mod troubled under PHMAP. The additional assistance shall be provided to the formerly mod troubled PHA in the FFY following the year in which the PHA is removed from the mod troubled list. Such assistance shall be provided to the PHA in addition to a PHA's regular formula allocation under § 968.103(e) and (f), and shall consist of:

(A) The total amount of credits accumulated by the PHA under paragraph (c)(6)(i) of this section; minus

(B) Any reductions under paragraph (c)(6)(ii) of this section to the total accumulated credits, based upon the length of time that the PHA has taken to remove its mod troubled designation; and

(C)(*1*) Adjusted by HUD to take into account the PHA's ability to expeditiously expend the accrued credit amounts. HUD shall consult with the PHA to determine the rate at which the PHA shall be provided access to its credits under this section. As a general guideline, HUD intends to provide a PHA with 10% of its accrued credits in the first year; an additional 20% of its accrued credits in the second year; an additional 30% of its accrued credits in the third year; and the remaining 40% of its accrued credits in the fourth year;

(*2*) In any FFY where formerly mod troubled PHAs are entitled to credits exceeding the five percent reserve, HUD shall apply a pro rata reduction for each formerly mod troubled PHA for such FFY. A PHA shall remain entitled to receive its outstanding balance of credits, including any credits not actually received because of such pro rata reduction, in future FFYs, depending upon the availability of funds in the set-aside under § 968.103(c).

§ 968.320 Comprehensive plan (including action plan).

(a) *Deadline for submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify PHAs in writing of their formula amount for use in developing their comprehensive plan, including the action plan, and the deadline for submitting a comprehensive plan.

(b)(1) *Resident participation.* A PHA is required to develop, implement, monitor and annually amend portions of its comprehensive plan in consultation with residents of the developments covered by the comprehensive plan. In addition, the PHA must also consult with resident management corporations (RMCs) to the extent that an RMC manages a development covered by the comprehensive plan. The PHA, in partnership with the residents, must develop and implement a process for resident participation which ensures that residents are involved in a meaningful way in all phases of the CGP. Such involvement shall involve implementing the Partnership Process as a critical element of the CGP.

(2) *Establishment of Partnership Process.* The PHA, in partnership with the residents of the developments covered by the plan (and which may include resident leaders, resident councils, resident advisory councils/boards, and RMCs) must establish a Partnership Process to develop and implement the goals, needs, strategies and priorities identified in the comprehensive plan. After residents have organized to participate in the CGP, they may decide to establish a volunteer advisory group of experts in various professions to assist them in the CGP Partnership Process. The Partnership Process shall be designed to achieve the following:

(i) To assure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the comprehensive plan including, but not limited to, the physical and management needs assessments, viability analysis, action plan, and annual statement. Where necessary, the PHA shall develop and implement capacity building strategies to ensure meaningful resident participation in the CGP. Such technical assistance efforts are eligible CGP costs;

(ii) To enable residents to participate, on a PHA-wide or area-wide basis, in ongoing discussions of the comprehensive plan and strategies for its implementation, and in all meetings necessary to ensure meaningful participation.

(3) *Initial notice.* Once HUD notifies a PHA of its estimated funding level, the PHA shall, within 30 calendar days of the date of HUD's notice, provide written notice to each of the democratically elected presidents of resident organizations of the developments covered by the comprehensive plan, concerning: HUD's estimated modernization funding level; a summary of the CGP requirements; the timeframes for completion of the required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under the CGP. This information also shall be made available to residents in written form and, where feasible, within each development;

(4) *Advance meeting for resident groups.* The PHA shall hold, at least three weeks before the public hearing under paragraph (b)(5) of this section, a meeting for residents and resident groups at which the PHA shall provide residents with draft copies of the executive summary, and shall explain the components of the comprehensive plan. The PHA shall make reasonable efforts to provide advance notice to all residents of the date and time of the meeting (in the form of flyers, advertisements, etc.). Residents shall be advised prior to the meeting that the comprehensive plan shall be available for their review at specified locations within the PHA's jurisdiction. The meeting shall be open to all residents and resident groups;

(5) *Public hearing.* The PHA shall hold at least one public hearing, and any appropriate number of additional hearings, to ensure ample opportunity for residents, local government officials, and other interested parties, to express their priorities and concerns. The PHA shall make reasonable efforts to provide advance written notice to each resident of the date and time of the public hearing. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties.

(c) *Local government participation.* A PHA shall consult with appropriate local government officials with respect to the development of the comprehensive plan. In the case of a PHA with developments in multiple jurisdictions, the PHA may meet this requirement by consulting with an advisory group representative of all the jurisdictions. At a minimum, such consultation must include providing such officials with:

(1) Advance written notice of the public hearing required under paragraph (b)(5) of this section;

(2) A copy of the executive summary; and

(3) An opportunity to express their priorities and concerns to ensure due consideration in the PHA's planning process;

(d) *Contents of comprehensive plan.* The comprehensive plan shall identify all of the physical and management improvements needed for a PHA and all of its developments, and that represent needs eligible for funding under § 968.310. The plan shall also include preliminary estimates of the total cost of these improvements. The plan shall set forth general strategies for addressing the identified needs, and highlight any special strategies, such as major redesign or partial demolition of a development, that are necessary to ensure the long-term physical and social viability of the development. Each comprehensive plan shall contain the following elements:

(1) *Executive summary.* A PHA shall include as part of its comprehensive plan an Executive Summary to facilitate review and comprehension by development residents and by the public. The Executive Summary shall include:

(i) A summary of total preliminary estimated costs to address physical needs by each development and management/operations needs PHA-wide;

(ii) A statement by the PHA concerning its overall modernization strategy, and its rationale for the approach and priorities adopted in its comprehensive plan. For example, a PHA's strategy may be that it will focus its resources on addressing its vacant properties before it brings its occupied units up to the modernization standards;

(iii) A statement by the PHA of its plans for development(s) currently funded for comprehensive modernization under the CIAP; and

(iv) A specific description of the PHA's process for maximizing the level of participation by residents during the development, implementation and monitoring of the comprehensive plan, a summary of the general issues raised on the plan by resident and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, resident organizations, and other interested parties upon request;

(2) *Physical needs assessment.* (i) *Requirements.* The physical needs assessment identifies all of the work that a PHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by section 14(e)(1)(A)(ii) of the Act, to comply with lead-based paint testing and abatement requirements under § 968.110(k), and to comply with other program requirements under § 968.110. The physical needs assessment is completed without regard to the availability of funds, and shall include the following:

(A) A brief summary of the physical improvements necessary to bring each such development to a level at least equal to the modernization standards contained in HUD Handbook 7485.2 (Public and Indian Housing Modernization Standards) and to the energy conservation and life-cycle cost-effective performance standards, as required in § 968.115; and to comply with the leadbased paint testing and abatement requirements under § 968.110(k); and the relative urgency of need also must be indicated. If the PHA has no physical improvement needs at a particular development at the time it completes its comprehensive plan, it must so indicate. Similarly, if the PHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development) it must so indicate in the summary of physical improvements;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) A preliminary estimate of the cost to complete the physical work;

(D) Any physical disparities between buildings occupied predominantly by one racial or ethnic group and, in such cases, the physical improvements required to correct the conditions;

(E) In addition, the PHA shall provide with respect to vacant or non-home buyer-occupied Turnkey III units, the estimated number of units that the PHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 968.310(b)(2).

(ii) *Source of data.* The PHA shall identify in its needs assessment the sources from which it derived data to develop the physical needs assessment under this paragraph, and shall retain such sources documents in its files.

(3) *Management needs assessment—* (i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the PHA and of each viable development so decent, safe and sanitary living conditions will be provided. The

management needs assessment shall include the following, with the relative urgency of need indicated:

(A) An identification of the most current needs related to the following areas (to the extent that any of these needs is addressed in a HUD-approved MOA or improvement plan, the PHA may simply include a cross-reference to these documents);

(*1*) The management, financial, and accounting control systems of the PHA;

(*2*) The adequacy and qualifications of personnel employed by the PHA in its management and operation, for each significant category of employment;

(*3*) The adequacy and efficacy of:

(*i*) Resident programs and services;

(*ii*) Resident and development security;

(*iii*) Resident selection and eviction;

(*iv*) Occupancy;

(*v*) Maintenance;

(*vi*) Resident management and resident capacity building programs;

(*vii*) Resident opportunities for employment and business development and other self-sufficiency opportunities for residents; and

(*viii*) Homeownership opportunities for residents.

(B) Any additional deficiencies identified through PHMAP, audits and HUD monitoring reviews which are not addressed under paragraph (c)(3)(i)(A) of this section. To the extent that any of these is addressed in a HUD-approved MOA or improvement plan, the PHA may include a cross-reference to these documents;

(C) Any other management and operations needs which the PHA wants to address at the PHA-wide or development level; and

(D) A PHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds;

(ii) *Sources of data.* The PHA shall identify in its needs assessment the sources from which it derived data to develop the management needs assessment under this paragraph, and shall retain such source documents in its files.

(4) *Demonstration of long-term physical and social viability.*—(i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (d)(2) and (d)(3) of this section will reasonably ensure the long-term physical and social viability of the development at a reasonable cost;

(ii) *Developments with hard cost of 90 percent or less of TDC.* Where the preliminary estimate of hard cost for work proposed at a development is 90 percent or less of TDC, and the PHA determines that, upon completion of the improvements and replacements under paragraphs (d)(2) and (d)(3) of this section, the development can reasonably be expected to be structurally sound and achieve full occupancy, the PHA may determine that the development has long-term physical and social viability at a reasonable cost;

(iii) *Developments with hard cost of greater than 90 percent of TDC.* Where the preliminary estimate of hard cost for work proposed at a development exceeds 90 percent of TDC, the PHA shall complete and submit to HUD, as part of its comprehensive plan, a viability analysis of the development, as prescribed by HUD. Where the PHA determines that completion of the improvements and replacements identified under paragraphs (d)(2) and (d)(3) of this section, the development can reasonably be expected to be structurally sound and achieve full occupancy, the PHA shall also submit to HUD a request to exceed the 90 percent of TDC. The Field Office shall review such requests on a case-by-case basis, in accordance with the following criteria:

(A) The PHA has adequately explained any special or unusual conditions; justified all work as necessary to meet the modernization and energy conservation standards, provided reasonable cost estimates, and made every effort to reduce costs;

(B) Rehabilitation of the existing development is more cost-effective in the long-term than construction or acquisition of replacement housing; and

(C) The PHA has no practical low-income housing alternative;

(iv) *Determination of non-viability.* Where a PHA's analysis of a development, either under paragraphs (d)(4)(ii) or (d)(4)(iii) of this section, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the PHA shall not expend CGP funds for the development, except for emergencies. The PHA shall specify in its comprehensive plan the actions it proposes to take with respect to the non-viable development (e.g., demolition or disposition under 24 CFR Part 970);

(5) *Five-year action plan*—(i) *General.* The comprehensive plan shall include a rolling five-year action plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (d)(2) and (d)(3) of this section. The PHA shall develop the action plan based on estimates provided by HUD of the amount of assistance the PHA will receive annually for a five-year period under § 968.103(e) and (f) (for this purpose, the PHA should assume that the current year level of funding will be available for each year of its five-year plan), and a PHA's estimate of the funds that will be available from other sources, such as State and local governments. All activities specified in a PHA's action plan are contingent upon the availability of funds;

(ii) *Requirements.* Under the action plan, a PHA must indicate how it intends to use the funds available to it under the CGP to address the deficiencies, or a portion of the deficiencies, identified under its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of a PHA's developments, a PHA must indicate in its action plan how it intends to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical needs assessment so as to bring each of its developments up to a level at least equal to the modernization and energy conservation standards and the projected FFY the PHA anticipates that such standards will be met. This would include specifying the work to be undertaken by the PHA in major work categories (e.g., kitchens, electrical systems, etc.); establishing priorities among the major work categories by development and year based upon the relative urgency of need; and estimating the cost of each of the identified major work categories. In developing its action plan, a PHA shall give priority to the following:

(*1*) Activities required to correct emergency conditions;

(*2*) Activities required to meet statutory (or other legally mandated) requirements, e.g., compliance with a court-ordered desegregation plan or voluntarily compliance agreement);

(*3*) Activities required to meet the needs identified in the Section 504 needs assessment within the regulatory timeframe; and

(*4*) Activities required to complete lead-based paint testing requirements by December 6, 1994.

(B) *Management and operations.* A PHA must address in its action plan the management and operations deficiencies (or a portion of the deficiencies) identified in its management needs assessment, as follows:

(*1*) With respect to the management and operations needs of the PHA, the PHA must identify how it intends to address the CGP funds, if necessary, the deficiencies (or a portion thereof) identified in its management needs assessment, including work identified through PHMAP, audits, HUD monitoring reviews, and self-assessments (this would include establishing priorities based upon the relative urgency of need);

(*2*) A preliminary PHA-wide cost estimate, by major work category.

(iii) *Procedure for maintaining current five-year action plan.* The PHA shall maintain a current five-year action plan by annually amending its action plan, in connection with the submission of its annual statement, so that the previous year of the existing action plan is eliminated and an additional year is added.

(6) *Local government statement.* The comprehensive plan shall include a statement signed by the chief executive officer of the unit of general local government (or, in the case of a PHA with developments in multiple jurisdictions, from the CEO of each such jurisdiction; certifying as to the following:

(i) The PHA developed the comprehensive plan/annual statement in consultation with local government officials and with residents of the developments covered by the comprehensive plan/annual statement, in accordance with the requirements of § 968.320(b)(1) and (2);

(ii) The comprehensive plan/annual statement is consistent with the unit of general local government's assessment of its low income housing needs (as evidenced by its Comprehensive Housing Affordability Strategy under 24 CFR Part 91, if applicable), and that the unit of general local government will cooperate in providing resident programs and services;

(iii) The PHA's proposed drug elimination activities are coordinated with, and supportive of, local drug elimination strategies and neighborhood improvement programs, if applicable.

(7) *PHA resolution.* The plan shall include a resolution adopted by the PHA Board of Commissioners, and signed by the Board Chairman of the PHA, approving the comprehensive plan or any amendments thereto and certifying that:

(i) The PHA will comply with all policies, procedures, and requirements prescribed by HUD for modernization, including implementation of the modernization in a timely, efficient, and economical manner;

(ii) PHA has established controls to assure that any activity funded by the CGP is not also funded by any other HUD program, thereby preventing a duplicate funding of any activity;

(iii) The PHA will not provide to any development more assistance under the CGP than is necessary to provide affordable housing, after taking into account other government assistance provided;

(iv) The proposed physical work will meet the modernization and energy conservation standards under 24 CFR 968.115;

(v) The proposed activities, obligations and expenditures in the Annual Statement are consistent with the proposed or approved Comprehensive Plan of the PHA;

(vi) The PHA will comply with applicable civil rights requirements under 24 CFR 968.110(a), and will carry out the Comprehensive Plan in conformity with title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973;

(vii) The PHA has adopted the goal of awarding a specified percentage of the dollar value of the total of the modernization contracts, to be awarded during subsequent FFYs, to minority business enterprises and will take appropriate affirmative action to assist resident-controlled and women's business enterprises under 24 CFR 968.110(b);

(viii) The PHA has provided HUD with any documentation that the Department needs to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 968.110(c), (d) and (m) and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Statement, until the PHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and other related authorities;

(ix) The PHA will comply with the wage rate requirements under 24 CFR 968.110(e) and (f);

(x) The PHA will comply with the relocation assistance and real property acquisition requirements under 24 CFR 968.110(g);

(xi) The PHA will comply with the requirements for physical accessibility under 24 CFR 968.110(h);

(xii) The PHA will comply with the requirements for access to records and audits under 24 CFR 968.110(i);

(xiii) The PHA will comply with the uniform administrative requirements under 24 CFR 968.110(j);

(xiv) The PHA will comply with lead-based paint testing and abatement requirements under 24 CFR 968.110(k);

(xv) The PHA has complied with the requirements governing local government and resident participation in accordance with 24 CFR 968.320(b) and (c), 968.330(d) and 968.340, and has given full consideration to the priorities and concerns of local government and residents, including any comments which were ultimately not adopted, in preparing the Comprehensive Plan/Annual Statement and any amendments thereto;

(xvi) The PHA will comply with the special requirements of 24 CFR 968.102 and 968.310(d) with respect to homeownership development; and

(xvii) The PHA will comply with the special requirements of 24 CFR 968.235 with respect to a Section 23 leased housing bond-financed development.

(e) *Amendments to the comprehensive plan*—(1) *Extension of time for performance.* A PHA shall have the right to amend its comprehensive plan (including the action plan) to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has not provided the assistance in a timely manner;

(2) *Amendments to needs assessments:* The PHA must amend its plan by revising its needs assessments whenever it proposes to carry out activities in its action plan or annual statement which are not reflected in its current needs assessment (except in the case of emergencies). When the bases for the needs assessment have substantially changed, a PHA may propose an amendment to its needs assessments, in connection with the submission of its annual statement (see § 968.330(b)), or at any other time. These amendments shall be reviewed by HUD in accordance with § 968.325;

(3) *Six-year revision of comprehensive plan.* The physical and management needs assessments, and the executive summary, are required to be revised only every sixth year, although the PHA may elect to revise some or all of these assessments more frequently. Consequently, every sixth year, a PHA must submit to HUD, with its annual statement, a complete revision of its comprehensive plan;

(4) *Annual revision of action plan.* Annually, the PHA shall submit to HUD, with its annual statement, an update of its five-year action plan, eliminating the

previous year and adding an additional year;

(5) *Required submissions.* Any amendments to the comprehensive plan under this section must be submitted with the PHA resolution under § 968.320(d)(7).

(f) *Prerequisite for receiving assistance*—(1) *Prohibition of assistance.* No financial assistance, except for emergency work to be funded under § 968.103(b) and 968.310(a)(2), and for modernization needs resulting from disasters under § 968.103(b), may be made available under this subpart unless HUD has approved a comprehensive plan submitted by the PHA which meets the requirements of § 968.320. A PHA that has failed to obtain approval of its comprehensive plan by the end of the FFY shall have its formula allocation for that year (less any formula amounts provided to the PHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP in accordance with the formula under § 968.103(e) and (f) in the subsequent FFY. A PHA which elects in any FFY not to participate in the CGP may participate in the CGP in subsequent FFYs;

(2) *Requests for emergency assistance.* A PHA may receive funds from its formula allocation to address emergency modernization needs where HUD has not approved a PHA's comprehensive plan. To request such assistance, a PHA shall submit to HUD a request for funds in such form as HUD may prescribe, including any documentation necessary to support its claim that an emergency exists. HUD shall review the request and supporting documentation to determine if it meets the definition of "emergency work" as set forth in § 968.305.

§ 968.325 HUD review and approval of comprehensive plan (including action plan).

(a) *Submission of comprehensive plan.* (1) Upon receipt of a comprehensive plan from a PHA, HUD shall determine whether:

(i) The plan contains each of the required components specified at § 968.320(d); and

(ii) Where applicable, the PHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate PHA performance, audit findings, or civil rights compliance findings;

(2) *Acceptance for review.* If the PHA has submitted a comprehensive plan (including the action plan) which meets the criteria of paragraph (a)(1) of this section, HUD shall accept the comprehensive plan for review, within 14 calendar days of its receipt in the field office. The PHA shall be notified in writing that the comprehensive plan has been accepted by HUD for review, and that the 75-day review period is proceeding;

(3) *Time period for review.* A comprehensive plan that is accepted by HUD for review shall be considered to be approved unless HUD notifies the PHA in writing, postmarked within 75 calendar days of the date of HUD's receipt of the comprehensive plan for review, that HUD has disapproved the plan. HUD shall not disapprove a comprehensive plan on the basis that it cannot complete its review within the 75-day deadline;

(4) *Rejection of comprehensive plan.* If a PHA has submitted a comprehensive plan (including the action plan), which does not meet the requirements of paragraph (a)(1) of this section, HUD shall notify the PHA within 14 calendar days of its receipt that HUD has rejected the plan for review. In such case, HUD shall indicate the reasons for rejection, the modifications required to qualify the comprehensive plan for HUD review, and the deadline date for receipt of any modifications.

(b) *HUD approval of comprehensive plan (including action plan).*—(1) A comprehensive plan (including the action plan) that is accepted by HUD for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked within 75 days of the date of HUD's receipt of the comprehensive plan for review, that HUD has disapproved the plan, indicating the reasons for disapproval, and the modifications required to make the comprehensive plan approvable. The PHA must re-submit the comprehensive plan to HUD, in accordance with the deadline established by HUD, which may allow up to 75 calendar days before the end of the FFY for HUD review. If the revised plan is disapproved by HUD following its resubmission, or if the PHA fails to resubmit by the deadline established by HUD, any funds that would have been allocated to the PHA shall be added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP in accordance with the formula under § 968.103(e) and (f). HUD shall not disapprove a comprehensive plan on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) HUD shall approve the comprehensive plan except where it makes a determination in accordance with one or more of the following:

(i) *Comprehensive plan is incomplete in significant matters.* HUD determines that the PHA has failed to include all required information or documentation in its comprehensive plan, e.g., the physical needs assessment does not provide all of the information required by HUD concerning all of its developments, or the PHA has supplied incomplete data on the current conditions and other characteristics of its developments;

(ii) *Identified needs are plainly inconsistent with facts and data.* On the basis of available significant facts and data pertaining to the physical and operational condition of the PHA's developments or the management and operations of the PHA, HUD determines that the PHA's identification of modernization needs (see § 968.320(d)(2) and (3)) is plainly inconsistent with such facts and data. HUD will take into account facts and data such as those derived from recent HUD monitoring, audits, and resident comments and will disapprove a comprehensive plan based on such findings as:

(A) *Identified physical improvements and replacements are inadequate.* The completion of the identified physical improvements and replacements will not bring all of the PHA's developments to a level at least equal to the modernization and energy conservation and life-cycle cost-effective standards in § 968.115 (except that a development must meet the energy standards under § 968.115 only when they are applicable to the work being performed);

(B) *Identified management improvements are inadequate.* The identified management and operations improvement needs do not address all of a PHA's areas of deficiency, or the completion of those improvements would not result in each of the PHMAP indicators/standards being brought up to at least a satisfactory level of performance;

(C) *Proposed physical and management improvements fail to address identified needs.* The proposed physical and management improvements in the action plan are not related to the identified needs in the needs assessments portion of the comprehensive plan, e.g., a heating plant renovation is in the action plan, but it was not included in the needs assessment for that development;

(iii) *Action plan is plainly inappropriate to meeting identified needs.* On the basis of the

comprehensive plan, HUD determines that the action plan (see § 968.320(d)(5)) is plainly inappropriate to meet the needs identified in the comprehensive plan, e.g., the proposed work item will not correct the need identified in the needs assessment. HUD will take into account the availability of funds. In addition, HUD will take into account whether the action plan fails to address work items that are needed to correct known emergency conditions or which are otherwise needed to meet statutory or other legally mandated requirements, as identified by the PHA in its comprehensive plan;

(iv) *Inadequate demonstration of long-term viability at reasonable cost.* HUD determines that the PHA has failed to demonstrate that completion of improvements and replacements identified in the comprehensive plan, as required by § 968.320(d)(2) and (3), will reasonably ensure long-term viability of one or more public housing developments to which they relate at a reasonable cost, as specified in § 968.320(d)(4);

(v) *Contradiction of local government certification or PHA resolution.* HUD has evidence which tends to challenge, in a substantial manner, the local government certification or PHA resolution contained in the comprehensive plan, as required in § 968.320(d) (6) and (7). Such evidence may include, but is not necessarily limited to:

(A) Evidence that the PHA failed to implement the Partnership Process and to meet the requirements for resident participation, as set forth in § 968.320(b). In such cases, HUD shall review the PHA's resident participation process and any supporting documentation to determine whether the standards for resident participation under § 968.320(b)(1) were met;

(B) A pending proceeding against a PHA based upon a charge of discrimination issued pursuant to the Fair Housing Act. (For purposes of this provision, "a charge of discrimination" means a charge, pursuant to Section 810(g)(2) of the Fair Housing Act issued by the HUD General Counsel, or his or her legally authorized designee.);

(C) A pending civil rights suit against the PHA instituted by the Department of Justice;

(D) Outstanding HUD findings of PHA noncompliance with civil rights statutes and executive orders under 24 CFR 968.110, or implementing regulations, as a result of formal administrative proceedings, unless the PHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(E) A deferral of the processing of applications from the PHA imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guideline (28 CFR 50.3) and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD section 504 regulations (24 CFR 8.57); or

(F) An adjudication of a violation under any of the authorities under 24 CFR 968.110(a) in a civil action filed against the PHA by a private individual, unless the PHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(c) *Effect of HUD approval of comprehensive plan.* After HUD approves the comprehensive plan (including the 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. 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, HUD may condition the receipt of assistance, in accordance with § 968.345(d). Moreover, in accordance with 18 U.S.C. 1001, any person 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.

§ 968.330 Annual statement of activities and expenditures.

(a) *General.* HUD shall notify PHAs in writing of their estimated formula amount for use in developing the annual statement and an update of the five-year action plan. The annual statement is the first year of the five-year rolling base action plan, and is intended to provide a more detailed discussion of the activities, obligations and expenditures which the PHA plans to undertake, in whole or in part, with the assistance to be provided by HUD. Thus, the annual statement provides HUD, the residents, and the public with greater detail concerning the planned utilization of current year funds, than the remaining years covered by the action plan. A PHA may elect to submit an annual statement which covers up to a two-year period, which would enable the PHA to shift work items within the two years of its approved annual statement. Such a PHA is still required to submit a new annual statement every year.

(b) *Submission.* After being advised by HUD of the estimated formula amount of assistance it will receive under this subpart with respect to any FFY, and estimating how much funding will be available from other sources, such as State and local governments, the PHA shall submit an annual statement of activities and expenditures and an update of the action plan, in accordance with instructions provided by HUD.

(c) *Acceptance for review.* Since the annual statement constitutes the first year (or, if so elected by a PHA, any period up to two years) of a PHA's rolling base action plan under § 968.320(d)(5), the PHA shall submit its annual statement to HUD at the same time that it submits its amendment to the action plan under § 968.320. Upon receipt of an annual statement from a PHA, HUD shall determine whether:

(1) It is complete in all significant matters; and

(2) The PHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate PHA performance, audit findings, or civil rights compliance findings. If the PHA has submitted a complete annual statement and all required information and assurances, HUD will accept the statement 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 statement as submitted, indicating the reasons for disapproval, the modifications required to qualify the annual statement 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 statement, including any proposed amendments to its comprehensive plan as provided in § 968.320 (b) and (c), in consultation with local government officials (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 of the developments covered by the comprehensive plan, as follows:

(1) *Notification.* The PHA shall undertake reasonable efforts to provide advance written notice to each of the residents in the affected housing development(s), and to appropriate local government officials, of the date and time of the public hearing under

paragraph (d)(3) of this section. In addition, the PHA shall undertake reasonable efforts to provide advance written notice (in the form of flyers, advertisements, etc.) to all residents of the affected housing development(s) of any other meetings which the PHA intends to hold, including the meeting with resident groups under paragraph (d)(2) of this section;

(2) *Meeting with Resident Groups.* The PHA shall hold, at least three weeks before the public hearing under paragraph (d)(3) of this section, a meeting with residents and resident groups at which the PHA will provide residents with information concerning the contents of the PHA's annual statement (and any proposed amendments to the PHA's comprehensive plan to be submitted with the annual statement) so that residents can adequately comment on the contents of the annual statement, and any proposed amendments, at the public hearings;

(3) *Public hearing.* The PHA shall hold a public hearing which allows residents of the developments covered by the comprehensive plan, appropriate local government officials, and other interested parties, an opportunity to summarize their priorities and concerns. The PHA shall give full consideration to the comments and concerns of residents of the affected developments and of local government officials in developing its annual statement, or any amendments to its comprehensive plan (including its dated action plan).

(e) *Contents of annual statement.* The annual statement must include, for each development or on a PHA-wide basis for management improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts (e.g., "dwelling structures") with a general description of work items (e.g., "replace kitchen cabinets," "repair bathroom floors");

(2) The cost for each work item, 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 MOA or improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds. In general, HUD expects that a PHA will obligate its current year's allocation of CGP funds (except for its funded replacement reserves) within two years and expend such funds within three years of the date of approval from HUD, unless longer time frames are approved by HUD due to local differences;

(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 statement or any amendments thereto, as set forth in § 968.320(d)(7).

(f) *Additional submissions with annual statement.* A PHA must submit with the annual statement any amendments to the comprehensive plan, as set forth in § 968.320(e), and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the comprehensive plan in accordance with the review standards under § 968.325(b).

(g) *HUD review and approval of annual statement—(1) General.* An annual statement accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked within 75 calendar days of the date that HUD receives the annual statement for review under paragraph (c) of this section, that HUD has disapproved the annual statement, indicating the reasons for disapproval, the modifications required to make the annual statement approvable, and the date by which such modifications must be received by HUD. HUD shall not disapprove an annual statement on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval of annual statement.* HUD shall approve the annual statement, except where:

(i) *Plainly inconsistent with comprehensive plan.* HUD determines that the activities and expenditures proposed in the annual statement 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 § 968.320(d)(7).

(h) *Amendments to annual statement.* The PHA shall submit to HUD for prior approval any major changes, as defined in § 968.305, except in the case of emergency work. Major changes shall be submitted in the form of an amendment to the PHA's approved annual statement. The PHA shall advise HUD of all changes due to emergencies in its performance and evaluation report submitted under § 968.340. HUD shall review a request to amend an annual statement in accordance with paragraph (f)(2) of this section. Any changes with respect to work items involving cumulatively less than 10% of a PHA's annual grant allocation do not require prior HUD approval, so long as the work is covered under the PHA's action plan. A PHA that has elected to submit an annual statement which covers up to a two year period may undertake without submitting an amendment for prior HUD approval the work items contained in either the first or second year of its annual statement. Such rescheduling of activities is not considered a major change.

(i) *Extension of time for performance.* A PHA may revise the target dates for fund obligation and expenditure in the approved annual statement whenever any valid delay outside the PHA's control occurs, as specified by HUD. Such revision is subject to HUD review and approval under § 968.345(a)(2) as to the PHA's continuing capacity. HUD shall not review with respect to a PHA's continuing capacity any revisions to the 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 statement, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's annual statement, HUD and the PHA shall enter into an ACC amendment to obtain modernization funds.

§ 968.335 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved the annual statement and entered into an ACC amendment or grant agreement with the PHA, the PHA shall undertake the modernization activities and expenditures set forth in its approved annual statement, subject to the following requirements:

(1) The PHA may undertake the activities using force account or contract labor, including contracting with an RMC. If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by the RMC, the PHA shall not retain for any administrative or other reason, any

portion of the CGP funds provided, unless the PHA and the RMC provide otherwise by contract; and

(2) All activities shall be monitored by resident groups within the framework and intent of the Partnership Process.

(b) *Fund requisitions.* To request modernization funds against the approved annual statement, the PHA shall submit a request to HUD in accordance with to be prescribed by HUD.

(c) *Contracting requirements.* The PHA shall comply with the wage rate requirements in § § 968.110 (e) and (f), and 968.120. In addition, the PHA shall comply with State and local laws and Federal requirements, as set forth in 24 CFR part 85, except as follows:

(1) *Assurance of completion.* For each construction or equipment contract over $25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h), a twenty percent cash escrow, or a twenty-five percent letter of credit or, as may be required by law, separate performance and payments bonds, each for fifty percent or more of the contract price;

(2) *Previous participation.* The PHA shall obtain HUD clearance under previous participation procedures for construction or equipment contract awards, over a HUD-specified amount, which shall include verifying that the contractor is not included on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

(d) *Assurance of non-duplication.* The PHA shall ensure that there is no duplication between the activities carried out pursuant to the CGP, and activities carried out with other funds.

(e) *Fiscal closeout of a comprehensive grant.* Upon expenditure by the PHA of all funds, or termination by HUD of the activities funded by each annual grant, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. The audit shall follow the guidelines prescribed by 24 CFR Part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall take such corrective actions as HUD may direct.

§ 968.340 PHA performance and evaluation report.

(a) *Submission.* 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 a time to be prescribed by HUD, describing its use of assistance in accordance with the approved annual statement. The PHA must make reasonable efforts to notify residents and local government officials 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.

(b) *Content.* The report shall include the following:

(1) An explanation of how the PHA has used other funds such as Community Development Block Grant program assistance, State assistance, and private funding, for the needs identified in the PHA's comprehensive plan and for the purpose of this subpart;

(2) An explanation of how the PHA has used the CGP funds provided under this subpart to address the needs identified in its comprehensive plan and to carry out the activities identified in its approved annual statement, and shall specifically address:

(i) Any funds used for emergency needs not set forth in its annual statement; and

(ii) Any deviations within the 10% cap for "major changes" to the annual statement under § 968.330;

(3) In the case of a PHA that has elected to submit an annual statement which covers up to a two-year period, any deviations in the order of work presented between years one and two of the approved annual statement;

(4) The results of the PHA's process for consulting with residents on the implementation of the plan;

(5) The current status of the PHA's obligations and expenditures, and specifying how the PHA is performing with respect to the implementation schedules provided in its approved annual statement; and an explanation of any necessary revisions to the planned target dates;

(6) A summary of resident or local government comments received on the report; and

(7) A resolution by the PHA Board of Commissioners approving the performance and evaluation report and containing a certification that the PHA has made reasonable efforts to notify residents in the development(s) of the opportunity to review the draft report and to comment on it before its submission to HUD, and that copies of the report were provided to residents in the development office, or upon their request.

§ 968.345 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.

(i) In making this determination, HUD will review the PHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved annual statement, consistent with the approved comprehensive plan. HUD will also review a PHA's schedules which are provided with its annual statement for purposes of determining whether the PHA has carried out its modernization activities in a timely manner;

(ii) HUD will review a PHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that the work carried out meets the modernization and energy conservation standards in § 968.115, this part, and other applicable laws and regulations.

(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.

(i) The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity are those described in paragraphs (a)(1) and (a)(3) of this section as they relate to carrying out the comprehensive plan. HUD generally will consider a PHA to have a continuing capacity if it determines that the PHA has:

(A) Carried out its activities under the CGP program, as well as the CIAP, in a timely manner, taking into account the level of funding available and whether the PHA obligates and expends approved modernization funds in accordance with the approved implementation schedule (except in circumstances beyond the PHA's control);

(B) Adequately inspected the funded modernization to assure that the

physical work is being carried out in accordance with the plans and specifications and the modernization and energy conservation standards (or, in the case of a PHA's performance under CIAP, whether the PHA has carried out the physical work in accordance with the HUD-approved budget and in conformance with the modernization and energy conservation standards) and that any HUD monitoring findings relating to the quality of the physical work have been, or are being, resolved);

(C) Established and maintained internal controls for its modernization program in accordance with HUD requirements for financial management and accounting, as determined by the fiscal audit;

(D) Administered its modernization contracts in accordance with a HUD-approved procurement policy, which meets the requirements of 24 CFR 85.36(a);

(E) Carried out its activities in accordance with its comprehensive plan and HUD requirements; and

(F) Has satisfied, or made reasonable progress toward satisfying, the performance standards prescribed in paragraph (a)(3) of this section as they relate to activities under the CGP program;

(ii) HUD will 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.

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

(i) With respect to the physical condition of each development, whether the work items being carried out by the PHA are in conformity with the modernization and energy conservation standards in § 968.115, and whether the PHA has brought, or is making reasonable progress toward bringing, all of its developments to these standards, in accordance with its physical needs assessment; and

(ii) With respect to the management condition of the PHA, whether the PHA has achieved, or is making reasonable progress towards implementing, the work items specified in its annual statement and five-year action plan which are designed to address deficiencies identified through PHMAP, audits, or HUD reviews.

(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 § 905.684;

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

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

(4) The PHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph (a)(3) of this section;

(5) An audit conducted in accordance with 24 CFR Part 44, or pursuant to other HUD reviews (including monitoring findings) reveals deficiencies that HUD reasonably believes require corrective action; or

(6) The PHA has failed to repay HUD for amounts awarded under the CGP program 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 paragraph (a)(1), (a)(2), or (a)(3) 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 annual statement or other applicable laws, regulations, or program requirements; and

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

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

(3) Notwithstanding 24 CFR 85.36(g), submit to HUD the following documents for prior approval, which may include, but are not limited to:

(i) Proposed agreement with the architect/engineer (prior to execution);

(ii) Complete construction and bid documents (prior to soliciting bids);

(iii) Proposed award of contracts, including construction and equipment contracts and management contracts; or

(iv) Proposed contract modifications prior to issuance, including modifications to construction and equipment contracts, and management contracts;

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the PHA's comprehensive plan, annual statement, or performance and evaluation 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;

(7) Take such other corrective actions HUD determines appropriate to correct PHA deficiencies.

(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) Withhold some or all of the PHA's grant;

(2) Declare a breach of the ACC grant amendment with respect to some or all of the PHA's functions; or

(3) Any other sanction authorized by law or regulation.

(g) *Reallocation of funds that have been withheld.* Where HUD has withheld for a prescribed period of time some or all of a PHA's annual grant, HUD may reallocate such amounts to other PHAs/IHAs under the CGP program, subject to approval in appropriations acts. The reallocation shall be made to IHAs which HUD has determined to be administratively capable under § 905.135, and to PHAs under the CGP program which are not designated as either troubled or mod troubled under the PHMAP at 24 CFR Part 901, based upon the relative needs of these IHAs and PHAs, as determined under the formula at § 905.601.

(h) *Right to appeal.* Before withholding some or all of the PHA's annual grant, declaring a breach of the ACC grant amendment, or reallocating funds that have been withheld, HUD will notify the PHA and give it an opportunity, within a prescribed period of time, to present to the Assistant Secretary for Public and Indian Housing any arguments or additional facts and data concerning the proposed action.

(i) *Notification of residents.* The PHA's Board of Commissioners must notify affected residents of HUD's final determination to withhold funds, declare a breach of the ACC grant amendment, or reallocate funds, as well as the basis for, and the consequences resulting from, such a determination.

(j) *Recapture.* In addition, HUD may recapture for good cause any grant amounts previously provided to an PHA, based upon a determination that the PHA has failed to comply with the requirements of the CGP program. Before recapturing any grant amounts, HUD will notify the PHA and give it an opportunity to appeal in accordance with § 968.345(h). Any reallocation of recaptured amounts will be reallocated in accordance with § 968.345(g). The PHA's board of Commissioners must notify affected residents of HUD's final determination to recapture any funds.

(k) *Cumulative remedies.* The authority to condition, withhold, reallocate or recapture a PHA's grant, as provided in this section, is in addition to the authority contained in § 968.312(c) to reduce a PHA's formula allocation based upon its designation as a mod troubled PHA.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

22. The authority citation for part 990 is revised to read as follows:

Authority: 42 U.S.C. 1437(g) and 3535(d).

23. In § 990.109, the first and second sentence of paragraph (e)(1) is revised to read as follows:

§ 990.109 Projected operating income level.

* * * * *

(e) * * *

(1) *Investment income.* PHAs with an estimated average cash balance of less than $20,000, excluding investment income earned from a funded replacement reserve under § 968.310(g), shall make a reasonable estimate of investment income for the Requested Budget Year. PHAs with an estimated average cash balance of $20,000 or more, excluding investment income earned from a funded replacement reserve under § 968.310(g), shall estimate interest on general fund investments based on the estimated average yield for 91-day Treasury bills for the PHA's Requested Budget Year (yield information will be provided by HUD). * * *

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24. Section 990.202 is revised to read as follows:

§ 990.202 Applicability.

The provisions of this subpart B are applicable to the development, modernization, and operation of the Turnkey III and Turnkey IV Homeownership Opportunity Programs and the housing owned by the PHAs of the Virgin Islands, Guam, Puerto Rico and Alaska.

Dated: January 28, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

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