

contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

Other Modernization (modernization other than emergency). A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or PHA-wide management work items (including planning costs), and/or lead-based paint testing, professional risk assessments, interim containment, and abatement.

Work item. Any separately identifiable unit of work constituting a part of a modernization program.

§ 968.210 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD shall publish in the FEDERAL REGISTER a notice of funding availability (NOFA), the time frame for submission of the CIAP Application, and other pertinent information.

(b) *PHA consultation with local officials and residents/homebuyers.* A PHA shall develop the application in consultation with local officials and residents/homebuyers, as set forth in § 968.215.

(c) *PHA application.* A PHA shall submit to HUD an application, in a form prescribed by HUD. Where a PHA has not included some of its developments in the CIAP application, HUD may not consider funding any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments.

(d) *Completeness Review.* To be eligible for processing, an application must be physically received by HUD by the time and date specified in the NOFA. Immediately after the application deadline, HUD shall perform a completeness review to determine whether the application is complete, responsive to the NOFA, and acceptable for technical processing.

(1) If the application form or any other essential document, as specified in the NOFA, is missing, the PHA's application will be considered substantially incomplete and, therefore, ineligible for further processing. HUD shall immediately notify the PHA in writing.

(2) If other required documents, including certifications, as specified in the NOFA, are missing or there is a technical mistake, such as no signature on a submitted form, HUD shall immediately notify the PHA in writing to submit or correct the deficiency within a specified period of time from the date of HUD's written notification. This is not additional time to substantially revise the application. Deficiencies which may be corrected at this time are inadvertently omitted documents or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application.

(3) If a PHA fails to submit or correct the items within the required time period, the PHA's application will be ineligible for further processing. HUD shall immediately notify the PHA in writing after this occurs.

(4) A PHA may submit an application for Emergency Modernization whenever needed.

(e) *Eligibility Review.* (1) *Eligibility for processing.* To be eligible for processing:

(i) Each eligible development for which work is proposed has reached the Date of Full Availability (DOFA) and is under ACC at the time of CIAP application submission; and

(ii) Where funded under Major Reconstruction of Obsolete Projects (MROP) after FFY 1988, the development/building/unit has reached DOFA or, where funded during FFYs 1986-1988, all MROP funds for the development/building have been expended.

(2) *Eligibility for processing on reduced scope.* When the following conditions exist, a PHA will be reviewed on a reduced scope:

(i) *Section 504 compliance.* Where a PHA has not completed all required structural changes to meet the need for accessible units, as identified in the PHA's Section 504 needs assessment, the PHA is eligible for processing only for Emergency Modernization or physical work needed to meet Section 504 requirements.

(ii) *Lead-based paint (LBP) testing compliance.* Where a PHA has not complied with the statutory requirement to complete LBP testing on all pre-1978 family units, the PHA is eligible for processing only for Emergency Modernization or work needed to complete the testing.

(iii) *Fair Housing and Equal Opportunity (FHEO) compliance.* Where a PHA has not complied with FHEO requirements set forth in §968.110, as evidenced by an enforcement action, finding or determination, the PHA is eligible for processing only for Emergency Modernization or for work needed to remedy the civil rights deficiencies—unless the PHA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance. The enforcement actions, findings, or determinations that trigger limited eligibility are described in paragraphs (e)(2)(iii) (A) through (E) of this section:

(A) A pending proceeding against the PHA based upon a charge of discrimination issued under the Fair Housing Act. A charge of discrimination is a charge under section 810(g)(2) of the Fair Housing Act (42 U.S.C. 3610(g)(2)), issued by the Department's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the PHA, referred by the Department's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of PHA noncompliance with civil rights statutes and executive orders specified in 24 CFR part 5 and §968.110 or implementing regulations, as a result of formal administrative proceedings;

(D) A deferral of the processing of applications from the PHA imposed by

HUD under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) and HUD implementing regulations (24 CFR 1.8), the Attorney General's Guidelines (28 CFR 50.3), and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the civil rights authorities specified in 24 CFR part 5 and §968.110 in a civil action filed against the PHA by a private individual.

(f) *Technical processing.* After all CIAP applications are reviewed for eligibility, HUD shall categorize the eligible PHAs and their developments into two processing groups: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. PHA developments may be included in both groups and the same development may be in each group. However, a PHA is only required to submit one CIAP application. Group 1 developments are not subject to the technical review rating and ranking and the long-term viability and reasonable cost determination. Group 2 developments are subject to the technical review rating and ranking and the long-term viability and reasonable cost determination. Preference will be given to PHAs which request assistance for developments having conditions which threaten the health or safety of the residents or having a significant number of vacant, substandard units, and which have demonstrated a capability of carrying out the proposed activities.

(g) *Rating on technical review factors.* After categorizing the eligible PHAs/developments into Group 1 and Group 2, HUD shall review and rate each Group 2 PHA on each of the following technical review factors:

(1) Extent and urgency of need, including need to comply with statutory, regulatory or court-ordered deadlines;

(2) Extent of vacancies, where the vacancies are not due to insufficient demand;

(3) PHA's modernization capability;

(4) PHA's management capability;

(5) Degree of resident involvement in PHA operations;

(6) Degree of PHA activity in resident initiatives, including resident management, economic development, and drug elimination efforts;

(7) Degree of resident employment;

(8) Local government support for proposed modernization; and

(9) Such additional factors as the Secretary determines necessary and appropriate.

(h) *Ranking and selection for Joint Review.* After rating all Group 2 PHAs/developments, HUD shall then rank each Group 2 PHA based on its total score, list Group 2 PHAs in descending order, subject to confirmation of need and cost at Joint Review, and identify for Joint Review selection the highest PHA ranking applications in Group 2 and other Group 2 PHAs with lower ranking applications, but with high priority needs, which most reasonably approximate the amount of modernization which can be funded. High priority needs are non-emergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines. All Group 1 applications are automatically selected for Joint Review.

(i) *Joint Review.* The purpose of Joint Review is for HUD to discuss with a PHA the proposed modernization program, as set forth in the CIAP Application, review long-term viability and cost reasonableness determinations, and determine the size of the grant, if any, to be awarded. HUD shall notify each PHA whose application has been selected for further processing as to whether Joint Review will be conducted on-site or off-site (e.g., by telephone or in-office meeting). A PHA shall prepare for Joint Review by preparing a draft CIAP budget and reviewing the other items to be covered during Joint Review, as prescribed by HUD. If conducted on-site, Joint Review may include an inspection of the proposed physical work. PHAs not selected for Joint Review will be advised in writing of the reasons for non-selection.

(j) *Funding decisions.* After all Joint Reviews are completed, HUD shall adjust the PHAs, developments, and work items to be funded and the amounts to

be awarded, on the basis of information obtained from Joint Reviews, environmental reviews, and FHEO review, and make the funding decisions. A PHA will not be selected for CIAP funding if there is a duplication of funding. HUD shall select all bona fide emergencies in Group 1 before funding Group 2 applications. After funding announcement, HUD shall request a funded PHA to submit a CIAP budget, including an implementation schedule, and any other required documents, including the ACC amendment. PHAs not selected for funding will be advised in writing of the reasons for non-selection.

(k) *ACC amendment.* After HUD approval of the CIAP budget, HUD and the PHA shall enter into an ACC amendment in order for the PHA to draw down modernization funds. The ACC amendment shall require low-income use of 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). The PHA Executive Director, where authorized by the Board of Commissioners and permitted by State law, may sign the ACC amendment on behalf of the PHA. HUD has the authority to condition an ACC amendment (e.g., to require a PHA to hire a modernization coordinator or contract administrator to administer its modernization program).

(l) *Declaration of trust.* As HUD may require, the PHA shall execute and file for record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

§ 968.215 Resident and homebuyer participation.

A PHA shall establish a Partnership Process, as defined in § 968.105, to develop, implement and monitor the CIAP. Before submission of the CIAP application, a PHA shall consult with the residents, the resident organization, or the resident management corporation (see part 964, subpart C of this