

## CHAPTER 10. HA RESPONSIBILITY: CONDUCT OF APPROVED ACTIVITIES

10-1.OBJECTIVE. The objective of this Chapter is to set forth requirements for the conduct of approved activities, including fund requisitions, cash management, procurement, and fiscal closeout. The Chapter also explains the revised requirements for previously funded CIAP programs in progress.

10-2.FORCE ACCOUNT.[ '968.120 or '950.612]

- A. Public Housing. The PHA may undertake the modernization activities using force account labor, only where specifically approved by HUD in the CIAP Budget or CGP Annual Statement, except no prior HUD approval is required where the PHA is designated as both an Overall High Performer and Mod High Performer under the Public Housing Management Assessment Program (PHMAP). The FO shall approve the use of force account labor only where it is cost-effective and appropriate to the scope and type of physical improvements and the PHA has the capacity to serve as its own main contractor and to maintain an adequate level of routine maintenance during force account activity.
- B. Indian Housing. The IHA may undertake the modernization activities using force account labor or contract labor, including contracting with a Resident Management Corporation (RMC), without prior HUD approval.
- C. Both Public and Indian Housing. If the entirety of a modernization activity (including the planning and architectural design of the rehabilitation) is administered by the RMC, the HA shall not retain for any administrative or other reason, any portion of the modernization funds provided, unless the HA and the RMC provide otherwise by contract.

10-3.INITIATION OF ACTIVITIES. After the FO has approved the Annual Statement and has entered into the ACC Amendment with the HA, the HA shall begin to undertake the modernization activities set forth in its approved Annual Statement. [ '968.125 or '950.614]

10-4.REVISED REQUIREMENTS FOR CIAP PROGRAMS IN PROGRESS. Where the HA is still implementing previously approved CIAP programs, the Department will permit the CGP agency, after approval of its Comprehensive Plan, to administer both CIAP and CGP funds on a similar basis in certain

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key functional areas. These same rules shall apply to Major Reconstruction of Obsolete Projects (MROP) approved with Modernization Project numbers in FFYs 1986-88 and subsequent FFY amendments to those MROPs; these same rules do not apply to MROPs

approved in FFY 1989 and thereafter because they were approved as development not modernization. The Department's goal is to provide maximum flexibility to the HA, while protecting the Federal interest, and to avoid HUD and HA operation of dual programs with different sets of requirements. Where there are significant program deficiencies, the FO may issue either a notice of deficiency or a corrective action order in accordance with paragraph 12-9. Generally through the first operational year of the HA's participation in the CGP and until there is evidence of the HA's performance under the CGP, the FO shall include consideration of the HA's performance under the CIAP in determining whether a notice of deficiency or a corrective action order is appropriate. Such notice or order may establish additional requirements for the CGP, as well as the CIAP.

- A. Thresholds for Contracting Actions. Under the CIAP, HUD establishes dollar thresholds for prior HUD approval of the following three contracting activities: (1) architectural/engineering and other professional services contracts before execution or issuance; (2) construction solicitations before issuance; and (3) contract modifications before issuance. There are no similar thresholds under the CGP. However, where HUD issues a notice of deficiency or a corrective action order in this functional area, HUD will establish the same thresholds for both the CIAP and the CGP. The thresholds will be established as high as possible to provide maximum flexibility to the HA, while protecting the Federal interest. Where no notice of deficiency or corrective action order is issued in this functional area, the HA will have no thresholds for either CIAP or CGP, and may undertake the above activities, regardless of dollar amount, without prior HUD approval.
- B. Construction Requirements. The construction requirements are the same for both the CIAP and the CGP. However, where HUD issues a notice of deficiency or a corrective action order in this functional area, HUD will establish the same submission requirements (e.g., periodic construction progress reports or construction completion documents) for both the CIAP and the CGP.
- C. Fund Requisitions. Refer to paragraph 10-5. Where HUD issues a notice of deficiency or a corrective action order in this functional area, HUD will establish the same review requirements for both the CIAP and the CGP.

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- D. Budget Revisions.
  - 1. General Requirements. The budget revision requirements are the same for both the CIAP and the CGP. Refer to paragraph 6-10, Amendments to Annual Statement. However, where HUD issues a notice of deficiency or a

corrective action order in this functional area, HUD will establish the same submission requirements for both the CIAP and the CGP.

2. Closing Out CIAP Budgets. To close out older CIAP Budgets, completed work items in CGP Annual Statements may be substituted for uncontracted work items in CIAP Budgets. Where undertaking this type of budget revision, the HA shall notify the FO and request a disbursement adjustment in LOCCS. The HA shall identify each grant involved in the adjustment and, by grant, the disbursed amounts by Budget Line Item (BLI) to be adjusted. The FO shall request that the Field Accounting Division (FAD) make the disbursement adjustment. Note: CIAP funds are not transferred from the original CIAP grant, but remain in and are accounted for in the original CIAP grant.
- E. Semi-Annual Progress Reports. Under the CIAP, HUD requires the HA to submit semi-annual progress reports until all funds for a particular CIAP grant are expended. The CIAP progress report is due 30 calendar days after the six-month periods ending 9/30 and 3/31. This CIAP requirement remains unchanged because of the Department's need to ensure that all approved CIAP funds are obligated and expended as quickly as possible by CGP agencies.
- F. Time Extensions. The time extension requirements are the same for both the CIAP and the CGP. However, where HUD issues a notice of deficiency or a corrective action order in this functional area, the HA will not be allowed to revise target dates under either the CIAP or the CGP without prior HUD approval.
- G. Actual Modernization Cost Certificate (AMCC). Under the CIAP, HUD requires the HA to submit an AMCC when a particular CIAP grant has been terminated or has been completed with all funds expended. This requirement remains unchanged because of the Department's need to complete fiscal closeout of approved programs. Refer to paragraph 10-10.

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10-5.FUND REQUISITIONS. To request CGP funds against the approved Annual Statement, the HA shall follow the requirements set forth in the latest HUD Notice on LOCCS/VRS for Modernization Program Areas. ['968.130 or '950.616]

10-6.CASH MANAGEMENT.

- A. Accounting Procedures. Refer to Appendix 2-2.
- B. Treatment of Interest Income Earned.

1. For Cash Drawdowns Other than for Replacement Reserve. U.S. Treasury requirements provide that the HA shall disburse cash within three working days of receipt. As with all CIAP funds, the CGP funds that are drawn down for purposes other than funding the CGP replacement reserve shall be reported in the calculation of Estimated Investment Income/Target Investment Income (EII/TII) for the calculation of operating subsidy in the Performance Funding System (PFS).
2. For Funds in the Replacement Reserve.
  - a. The HA is permitted to retain the interest earned on the replacement reserve. Such interest income is excluded from the EII/TII calculation of operating subsidy in PFS. Even though the replacement reserve funds are excluded from the EII/TII calculation, the HA shall ensure that the funds in the replacement reserve earn interest at or above the operating budget TII rate (average 91-day Treasury bill rate) which coincides with the HA's CGP reporting period (July 1 through June 30). The interest rate earned on the replacement reserve will be reviewed and reported by the Independent Auditor in the annual audit report.
  - b. For the day-to day cash management of the replacement reserve, the HA shall follow the requirements set forth in Notice PIH 96-33, Required HA Cash Management and Investment Policies and Procedures, dated June 4, 1996. These requirements include competitive selection of a bank, collateralization of deposits, and HUD-approved investment securities.

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- C. Replacement reserve funds, including accrued interest, shall be used only for eligible modernization costs.

10-7.TIME EXTENSIONS. The HA shall not obligate or expend funds after the obligation or expenditure deadline date approved by HUD in the original implementation schedule (Part III of Annual Statement) without a time extension as set forth in subparagraphs A or B. ['968325(i)(2) or '950.656(i)(2)]

- A. No Prior HUD Approval. The HA may extend the target dates for fund obligation and expenditure in the HUD-approved original implementation schedule whenever any delay outside of the HA's control occurs and the extension occurs no later than 30 calendar days after the existing deadline dates. Such extension is subject to HUD review under paragraph 12-5 as to the HA's continuing capacity. Examples of delay outside of the HA's control are:

1. Need to use leftover funds from a completed modernization program for additional work. Note: LBP Risk Assessment funds that are leftover shall not be used for other purposes and shall be recaptured after audit;
2. Unforeseen delays in contracting or contract administration;
3. Litigation; or
4. Delay by HUD or other institutions. Note: Delay by the HA's staff, Board of Commissioners or, where the HA is part of the local government, the local government itself, or a change in the Executive Director is considered to be within the HA's control and, therefore, requires prior HUD approval.

B. Prior HUD Approval. The HA shall not extend the target dates for fund obligation and expenditures whenever any delay within the HA's control occurs or the extension occurs 30 calendar days after the existing deadline dates. In such case, the HA may request FO approval of a time extension to avoid recapture of funds. The request shall include an explanation of the delay, steps taken to prevent future delay, and the requested extension. FO approval of a time extension will allow the PHA more time to obligate and expend funds, but will adversely affect the PHA's PHMAP score on the Modernization Indicator, Components #1 and #2.

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10-8. CONTRACTING REQUIREMENTS. The HA shall comply with the contracting requirements set forth in 24 CFR 85.36, except as noted in subparagraphs B and D, and set forth in the Procurement Handbook for PHAs and IHAs 7460.8, as revised. ['968.135 or '950.618]

- A. Wage Requirements. The HA shall comply with the prevailing wage rate requirements set forth in Appendix 1-8.
- B. Assurance of Completion. For each construction contract over \$100,000 or any lesser amount required by State or local/tribal law or the HA's own procurement policy, the contractor shall furnish a bid guarantee from each bidder equivalent to 5% of the bid price and one of the following:
  1. A performance and payment bond for 100% of the contract price; or
  2. Separate performance and payments bonds, each for 50% or more of the contract price; or
  3. A 20% cash escrow; or
  4. A 25% irrevocable letter of credit.

C. Prior HUD Approval Under '85.36(g). The HA is exempt from the prior HUD approval requirements of this subparagraph if the HA requests a HUD determination, and HUD determines, that the HA's procurement systems comply with the standards of '85.36. If the HA fails to request such a determination or if HUD determines that the HA's procurement procedures or operation fails to comply with the standards of '85.36, the HA shall obtain prior HUD approval when:

1. The procurement is expected to exceed \$100,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
2. The procurement is expected to exceed \$100,000 and specifies a "brand name" product; or
3. The proposed award over \$100,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

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4. A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$100,000 on a noncumulative basis.

D. Prior HUD Approval Notwithstanding '85.36(g). Notwithstanding '85.36(g), where HUD issues a notice of deficiency or a corrective action order in this functional area, the HA may be required to submit the following documents to HUD for prior approval:

1. Proposed agreement with the architect/engineer (A/E) or other professional services contractors before execution or issuance;
2. Complete construction and management improvement solicitations before inviting bids or proposals; and
3. Proposed modifications to construction and management contracts before issuance, except in an emergency endangering life or property.

E. Construction Requirements. Where poor performance is indicated, the HA may be required to submit to the FO periodic construction progress reports and, for prior HUD approval, construction completion documents above a HUD-specified amount. The FO shall notify the HA of additional construction requirements by a notice of deficiency or a corrective action order.

F. Lists of Parties Excluded. The HA shall retain documentation on file that the contractor is not included on the Lists of Parties Excluded from Federal Procurement or

Nonprocurement Programs.

- G. Contracting with Resident-Owned Businesses. The PHA may use an alternative procurement when contracting with businesses owned in substantial part by public housing residents, as set forth in 24 CFR Part 963, and with Section 3 business concerns, as set forth in 24 CFR Part 135. The IHA should refer to 24 CFR 950.175 for Indian preference requirements.

10-9.ON-SITE INSPECTIONS. It is the responsibility of the HA, not HUD, to 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 A/E to ensure work quality and progress. ['968.140 or '950.6201

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10-10.HA SUBMISSION OF ACTUAL MODERNIZATION COST CERTIFICATE (AMCC) AND FINAL REPORT. Upon completion or termination of the modernization activities funded by each annual grant and payment of all authorized costs, the HA shall submit Form HUD-53001, AMCC, to the FO for review before inclusion in the HA's annual audit. Complete instructions for preparing Form HUD-53001 are set forth in Appendix 10-1. In addition, the HA shall submit Form HUD-52837, Annual Statement/Performance and Evaluation Report, marked "final." ['968.145(a) or '950.622(a)]

10-11.HUD REVIEW OF AMCC. Upon receipt of the required documents, the FO shall review the documents as follows:

- A. The amounts on the "final" Report and the AMCC must agree as to funds approved, obligated, and expended. The FO is not required to respread the BLIs in LOCCS to reflect actual expenditures by BLI.
- B. The amount of funds approved and disbursed on the AMCC must agree with Departmental records in LOCCS.
- C. If the "final" Report and the AMCC indicate that excess funds have been provided to the HA, the FO shall direct the HA to remit immediately the excess funds, without waiting for the audit, and then subsequently to submit a revised "final" Report or AMCC, showing that total funds disbursed, obligated and expended are equal amounts. If the audit of the AMCC shows that the HA over-remitted funds, HUD will return the amount of the overremittance to the HA.
- D. When the amounts disbursed, obligated and expended are equal in LOCCS, the FO shall enter the Pre-Audit End Date in LOCCS, which stops all reminder letters.

10-12.AUDIT VERIFICATION OF AMCC. When the submitted documents are correct, the FO shall notify the HA in writing that the AMCC is approved for audit and shall be included in the HA's next

regularly fiscal audit conducted by the Independent Auditor. The audit shall follow the guidelines prescribed in 24 CFR Part 44, Non-Federal Government Audit Requirements (Single Audit Act of 1984 (31 U.S.C. 7501-7507)). HUD reserves the right to conduct audits. If the audited AMCC discloses unauthorized or ineligible expenditures, the HA shall take such corrective actions as the FO may direct. ['968.145(b) or '950.622(b)]

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10-13.HUD APPROVAL OF AMCC. Upon receipt of a copy of the audit report from the HA, the FO shall review the audit report to determine if the audited costs agree with the costs shown on the AMCC. If the audited AMCC indicates that there are still excess funds, the HA shall remit the excess funds, as directed by the FO. If the audited AMCC discloses unauthorized expenditures, the HA shall take such corrective actions as the FO may direct. After all audited costs have been reconciled, the OPH Director/ONAP Administrator shall approve the AMCC. After signature, the FO shall distribute the original and copies of the approved AMCC as follows:

- A. To the HA, one copy for records purposes.
- B. To HUD Counsel's files, one copy for attachment to the CGP Amendment. Where necessary, the AMCC shall serve to automatically amend the CGP Amendment to reduce the amount of the annual grant to the actual modernization cost.
- C. To the FO program files, one copy for records purposes.
- D. To the FAD, the original for entry of the Post-Audit End Date in LOCCS.
  1. Where HUD records (LOCCS) and HA records (audit) agree as to funds obligated, expended and disbursed, the FAD shall immediately enter the Post-Audit End Date in LOCCS, which interfaces with PAS to record that the grant has been closed out.
  2. Where the HA owes funds to HUD (i.e., the amount disbursed by LOCCS is greater than the amount obligated and expended by the HA per the audit), the FAD shall establish an accounts receivable in PAS through LOCCS, which will automatically adjust the obligation and expenditure information downward by the amount of the receivable. In addition, the FAD shall record the receivable in the Departmental Accounts Receivables Tracking System (DARTS). Upon receipt of the remittance by the Department, the FAD shall record the remittance so that the amount disbursed by LOCCS is equal to the amount obligated and expended by the HA per the audit. The FAD then shall enter the Post-Audit End Date. The HA shall remit as follows:

- a. Where the remittance is \$2,000 or less, the HA make out a check payable to the Department of HUD and notate on

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the check the Modernization program area ("COMP", "CIAP" or "LBP") and the grant number. The HA shall send the check to NationsBank, Excess Financing, P.O. Box 100144, Atlanta, GA 30384.

- b. Where the remittance is over \$2,000, the HA shall request is financial institution to wire the funds to HUD in accordance with instructions set forth in the Financial Management Handbook 7485.1, as revised. The wire transfer shall identify the Modernization program area and the grant number.
3. Where HUD owes funds to the HA (i.e., the amount disbursed by LOCCS is less than the amount obligated and expended by the HA per the audit), the FAD shall enter the Post-Audit End Date and the amount owed by HUD. LOCCS will automatically adjust the obligation and expenditure information upward by the amount which HUD owes and generate a voucher for that amount. After FO review and approval, LOCCS will generate a letter to the HA identifying the grant for which the additional payment is being made.
4. After the FAD enters the Post-Audit End Date, all undisbursed balances will be automatically recaptured through LOCCS. The FO is no longer required to prepare PAD forms to recapture excess authority.

10-14.CGP PHASE-OUT AND USE OF REPLACEMENT RESERVE. If the HA's unit count falls below the CGP levels as described in paragraph 3-7C, the HA shall use its replacement reserve only for eligible modernization activities, as approved by the FO.

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