

CHAPTER 5. HUD RESPONSIBILITY: REVIEW AND ACTION
ON COMPREHENSIVE PLAN

- 5-1. OBJECTIVE. The objective of this Chapter is to set forth the prerequisite for receiving CGP assistance and the criteria for HUD acceptance of the Comprehensive Plan for review and for HUD review and action on the Plan and any amendments. [Sec. 14(e)(2)(A) and (B)]
- 5-2. PREREQUISITE FOR RECEIVING ASSISTANCE. ['968315(g) or '950.652(f)]
- A. Except for emergency work, as defined in paragraph 1-6, and for modernization needs resulting from natural and other disasters under paragraph 3-8, no financial assistance may be made available under the CGP unless HUD has approved a Comprehensive Plan submitted by the HA which meets the requirements of Chapter 4.
 - B. The HA that fails to obtain approval of its Comprehensive Plan by the end of the FFY (or fails to submit its Comprehensive Plan by July 15 because there will be insufficient time for HUD review) shall have its formula allocation for that year (less any formula amounts provided to the HA for emergencies) carried over and added to the subsequent FFY's appropriation of funds for CGP grants. HUD then shall allocate such funds to all CGP agencies in accordance with the formula under Chapter 3 in the subsequent FFY. If the HA obtains approval of its Comprehensive Plan in the next FFY, the HA shall receive its formula allocation for that FFY but not for the previous FFY. The HA that chooses not to participate in the CGP in any FFY may choose to participate in the CGP in a subsequent FFY without adverse consequences.
- 5-3. HUD ACCEPTANCE FOR REVIEW. ['968.320(a) or '950.654(a)]
- A. HUD Determination. Upon receipt of the Comprehensive Plan, the FO shall conduct a completeness review to determine whether:
 - 1. The Comprehensive Plan contains each of the required components specified in paragraph 4-4. (See Appendix 5-1, HUD Review Checklist for Comprehensive Plan); and
 - 2. Where applicable, the HA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate HA performance, audit

corrective action orders.

- B. Acceptance for Review. If the HA has submitted a complete Comprehensive Plan under subparagraph A, the FO shall accept the Comprehensive Plan for review within 14 calendar days of its receipt in the FO, as evidenced by a date stamp. The FO shall notify the HA in writing that its Comprehensive Plan has been accepted for review and that the 75-day review period is proceeding (i.e., 14 calendar days for acceptance for review plus 61 calendar days for substantive review).
- C. Time Period for Review. A Comprehensive Plan that is accepted by the FO for review, shall be considered to be approved unless the FO notifies the HA in writing, postmarked within 75 calendar days of the date of HUD's receipt of the Comprehensive Plan for review, that the Plan is disapproved. The FO shall not disapprove a Comprehensive Plan on the basis that it cannot complete its review within the 75-day deadline.
- D. Consultation with HA during Review Period. Although HAs are responsible for submitting approvable Comprehensive Plans, the Department believes that it is in the best interest of the CGP to work cooperatively with HAs to maximize approval of the Comprehensive Plans. Therefore, the FO shall communicate informally with the HA during the review period to obtain clarification of data or information or to request corrections, such as for ineligible work items, mathematical errors, or other items which may result in disapproval. Such consultation is permitted under the Reform Act since it will not affect the amount of the HA's formula-based grant. Notwithstanding any informal consultations, if the FO determines that the HA's Comprehensive Plan meets the statutory/regulatory criteria for disapproval, the FO is responsible for disapproving the Plan within the 75-day review period.
- E. Rejection of Plan for Review. If the HA has submitted a Comprehensive Plan, which is not complete under subparagraph A, the FO shall notify the HA in writing within 14 calendar days of its receipt that the Comprehensive Plan has been rejected for review and that the review clock has been stopped. The FO shall indicate all the reasons for rejection, the modifications required to qualify the Comprehensive Plan for HUD review, and the deadline for receipt of any modifications so that a subsequent HUD review may be completed by the end of the FFY (September 30).

- 1. The FO shall establish the deadline for resubmission no later than 75 calendar days before the end of the FFY or July 15 since no substantive review of the Plan was conducted. If the HA resubmits before July 15, a new 75-day review period begins upon receipt of the

resubmission.

2. It is advantageous for the HA to resubmit quickly in order to obtain its annual grant funds as early as possible in the FFY.
3. If the HA resubmits after July 15, the FO has the discretion to reject the Comprehensive Plan for review in that FFY on the basis that there is insufficient time for HUD review.

5-4. HUD REVIEW CRITERIA. Under the CGP, the HA, in consultation with residents and local/tribal government, is responsible for development of the Comprehensive Plan which identifies all work required to bring its units up to the modernization and energy conservation standards, addresses all management deficiencies, and establishes modernization strategies and funding priorities. The CGP differs from the CIAP in that HUD is not responsible for determining modernization strategies and funding priorities. Therefore, the FO shall approve the Comprehensive Plan except where it makes a determination in accordance with one or more of the following statutory/regulatory criteria. Although examples of situations which are and are not a basis for disapproval are provided, it is not possible to provide an all-inclusive list. Where the FO determines that the Comprehensive Plan meets the following statutory/regulatory criteria for disapproval, the FO must present objective and documented data to support its position. During the review period, FO Public/Indian Housing (PIH) staff shall consult with Fair Housing and Equal Opportunity (FHEO) staff regarding whether there are any civil rights compliance issues. PIH shall use the HUD Review Checklist for Comprehensive Plan, contained in Appendix 5-1, and include the completed Checklist in each HA's file. ['968.320(b)(2) or '950.654(b)(2)]

- A. Comprehensive Plan is Incomplete in Significant Matters. The FO determines that the HA has failed to include all required information or documentation in its Comprehensive Plan to the degree that the Plan is substantially incomplete in significant matters and does not reflect the true needs of the HA.

Example: The HA has not completed a Physical Needs Assessment for one of its 20 developments or has completed the Physical Needs Assessment for each development, but has omitted substantial information on several Assessments, as documented by HUD monitoring reviews or audits. This is a basis for disapproval.

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Example: The HA has failed to check the boxes related to occupancy and structure type on 3 of 20 of its Physical Needs Assessments. Since these omissions do not substantially affect the completeness of the Comprehensive

Plan, this is not a basis for disapproval.

- B. 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 HA's developments or the management and operations of the HA, the FO determines that the HA's identification of modernization needs (see paragraphs 4-7 and 4-9) is plainly inconsistent with such facts and data. The FO shall take into account facts and data, such as those derived from recent HUD monitoring, audits, and resident comments, and shall disapprove a Comprehensive Plan based on such findings as:

1. Identified physical improvements and replacements are inadequate. The completion of the identified physical improvements and replacements will not bring all of the HA's developments to a level at least equal to the modernization and energy conservation standards.

Example: A HUD monitoring review has documented major physical deficiencies at various developments. The HA has not demonstrated that it will correct these deficiencies up to the modernization standards on the Physical Needs Assessments for those developments. Since there is a pattern of incomplete identification of physical needs, this is a basis for disapproval.

Example: A HUD monitoring review has documented the need for electrical upgrade at one development. The HA has not included this need on the Physical Needs Assessment for that development. Since this one omission does not indicate a pattern of incomplete identification of physical needs, this is not a basis for disapproval unless the HA includes the electrical work in the Five-Year Action Plan. All work included on the Five-Year Action Plan must be reflected on the Physical Needs Assessments.

2. Identified management improvements are inadequate. The identified management and operations improvement needs do not address all of the HA's mandatory improvement areas or the completion of those improvements will not result in an acceptable level of management performance, as set forth in paragraph 4-9B.

Example: HUD monitoring reviews and independent audits have documented that the HA's financial and accounting control systems have major deficiencies. The HA has submitted the Management Needs Assessment without addressing these deficiencies. Since correction of deficiencies in financial and accounting control systems is a mandatory management improvement, this is

a basis for disapproval.

Example: The HA has identified rent collection as a serious problem and a major management improvement need, but has proposed correcting the deficiency by sending a letter to each resident in arrears. The HA tried this approach several years ago without any success. The FO will not generally question the HA's proposed action for correcting management deficiencies. However, where documentation exists in regard to this HA that the proposed corrective action was tried previously, was unsuccessful in correcting the deficiency, and, therefore, is now insufficient this is a basis for disapproval. It is anticipated that disapproval on this basis will be rare.

3. Proposed physical and management improvements fail to address identified needs. The proposed physical and management improvements in the Five-Year Action Plan are not related to the identified needs in the needs assessment portions of the Comprehensive Plan.

Example: The HA has included a heating plant renovation in the Five-Year Action Plan, but not in the Physical Needs Assessment for that development. This is a basis for disapproval.

- C. Action Plan is Plainly Inappropriate to Meeting Identified Needs. On the basis of the Comprehensive Plan, the FO determines that the Five-Year Action Plan (see paragraph 4-10) 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. In making this determination, the FO shall take into account the availability of funds and whether the Five-Year Action Plan fails to address or give appropriate priority to work items, as set forth in paragraph 4-10D, that are needed to correct emergency conditions or to meet statutory or other legally mandated requirements (excluding local codes), as identified by the HA in its Comprehensive Plan. Otherwise, the FO will not generally

question the HA's priorities for addressing needs or developments.

Example: A development with three-story walk-up units has a significant number of hard to market one-bedroom units, but a large demand for family-size units. The FO strongly advocates the conversion of these units to larger size bedrooms. The HA does not agree and has not adopted a conversion strategy for the one-bedroom units. This is not a basis for disapproval since it is the HA's prerogative to develop a strategy to successfully market the one-bedroom

units. Although the FO may suggest strategies, it is expected that the FO will defer to local judgement. If the HA carries out the strategies in its approved Five-Year Action Plan, the FO will not issue a notice of deficiency or corrective action order on this issue. However, if the one-bedroom vacancies result in an unacceptable level of performance under PHMAP the FO shall deal with the deficiency under PHMAP procedures. (see Chapter 12).

Example: A recent HUD monitoring review has documented extensive roof problems at a particular development, which will result in emergency conditions within the next several years. Although roof replacement is listed on the Physical Needs Assessment for the development, the roof work does not appear on the Five-Year Action Plan. This is a basis for disapproval because the FO can substantiate that an emergency will occur unless the roof work is performed within the next five years.

Example: The HA has failed a PHMAP indicator and its Improvement Plan (IP) indicates that CGP funds will be needed in year two to correct the deficiencies. The Five-Year Action Plan does not include this management improvement until year five and the HA has not requested a revision to its IP. This is a basis for disapproval.

- D. Inadequate Demonstration of Long-Term Viability at Reasonable Cost. The FO determines that the HA has failed to demonstrate that completion of the improvements and replacements identified in the Comprehensive Plan, as required by paragraphs 4-7 and 4-9, will reasonably ensure the long-term viability at a reasonable cost of one or more developments, as required by paragraph 4-8. In most cases, HUD intends to accept the HA's viability determinations without doing its own independent determinations. This is because residents and other interested parties will have an opportunity to express their concerns about the HA's viability determinations at the required public hearing. However, in exceptional cases, where HUD believes that the HA has failed to demonstrate long-term viability at a reasonable cost for a development, the FO shall disapprove the Comprehensive Plan.

Example: A development with a high vacancy rate has unfunded hard costs estimated at 85% of computed Total Development Cost (TDC). The HA has stated that the development has long-term viability and will be fully occupied at the completion of the modernization work. It is a large family development in a high crime, deteriorated, impacted neighborhood with high concentrations of subsidized housing. The HA makes a reasonable case that social viability problems will be overcome through substantial rehabilitation of the development in its current

configuration. Although the FO doubts that long-term viability may be achieved without partial demolition to reduce density, the FO will not substitute its judgement for that of the HA. This is not a basis for disapproval.

Example: A development with a high vacancy rate has unfunded hard costs estimated to exceed 90% of computed TDC. The HA has submitted its request to exceed 90% of TDC and has stated that the development has long-term viability and will be fully occupied at the completion of the modernization work. It is a large family development in a high crime, deteriorated, impacted neighborhood with high concentrations of subsidized housing. The HA does not make a reasonable case that social viability problems will be overcome through substantial rehabilitation of the development in its current configuration. The HA previously received funds for the comprehensive modernization of the development, which was completed in 1987. Since then, the development has deteriorated again to the point where substantial rehabilitation is required. In such case, the FO has hard evidence that a refunding of this development in its current configuration will not result in long-term viability. This is a basis for disapproval.

- E. Contradiction of Local Government Statement or HA Board Resolution. The FO has evidence which tends to challenge, in a substantial manner, the Local Government Statement or the HA Board Resolution, as required by paragraphs 4-11 and 4-12. Such evidence may include:

Example: HUD has evidence that the HA failed to conduct an advance meeting for resident groups, but did conduct a public hearing. Since the advance meeting requirement is a substantive requirement to ensure adequate opportunity for resident participation, this is a basis for disapproval.

- 5-5. HUD ACTION. After FO review of the entire Comprehensive Plan, including the Five-Year Action Plan, in accordance with paragraph 5-4, the FO shall notify the HA in writing of approval or disapproval, as follows:

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- A. Approval. ['968.320(c) or '950.654(c)]
1. Where the FO is approving the Comprehensive Plan, or any amendment to the Plan, the FO letter shall so state, provide any non-binding advice and guidance, and indicate that approval does not constitute any endorsement of the HA's priorities or funding strategies. Where the FO also is approving the use of unobligated CIAP funds for CGP purposes, the letter shall so state. The Comprehensive Plan, or any amendments, is then binding upon HUD and the HA until such time as the HA submits, and the FO approves, an

amendment to its Plan. See Appendix 5-2 for sample approval letter.

2. Subsequent to approval, if the FO determines, as a result of an audit or monitoring findings, that the HA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of the program, the FO may take appropriate action, including sending a notice of deficiency or a corrective action order under paragraph 12-9. 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.

B. Disapproval. Where the FO is disapproving the Comprehensive Plan, or any amendment to the Plan, the FO letter shall state all the reasons for the disapproval the modifications required to make the Comprehensive Plan approvable, and the deadline for receipt of any modifications so that a subsequent HUD review may be completed by the end of the FFY (September 30). The FO shall send copies of all disapproval letters to Headquarters. ['968320(b)(1) or '950.654(b)(1)]

1. In establishing the deadline for resubmission, the FO may allow up to 75 calendar days before the end of the FFY for HUD review; however, the FO may allow less than 75 calendar days for its review since a substantive review of the Plan was previously conducted. See paragraph 5-2B regarding reallocation of funds when the Comprehensive Plan is disapproved.
2. It is advantageous for the HA to resubmit quickly in order to obtain its annual grant funds as early as possible in the FFY.