

CHAPTER 7. HUD RESPONSIBILITY: REVIEW AND ACTION  
ON ANNUAL SUBMISSION

- 7-1. OBJECTIVE. The objective of this Chapter is to set forth the criteria for HUD acceptance of the Annual Submission, including the Annual Statement and related documents, for review and for HUD review and action on the Annual Submission. [Sec. 14(e)(3)(C)]; ['968.325(g) or '950.656(g)]
- 7-2. HUD ACCEPTANCE FOR REVIEW.
- A. Deadline for Submission. After HUD notifies the HA of its annual formula amount, the HA may make its Annual Submission to the FO as soon as all program requirements have been met. The outside deadline for the Annual Submission is July 15 so that the FO may exercise its full 75-day review authority where needed.
  - B. HUD Determination. Upon receipt of the Annual Submission, the FO shall conduct a completeness review to determine whether:
    - 1. The Annual Submission contains each of the required components specified in paragraph 6-5. (See Appendix 7-1, HUD Review Checklist for Annual Submission); 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 findings, civil rights compliance findings, or corrective action orders.
  - C. Time Period for Review. An Annual Submission 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 Annual Submission for review, that the Annual Submission is disapproved. The FO shall not disapprove an Annual Submission on the basis that it cannot complete its review within the 75-day deadline. The FO shall make every effort to complete its review within 14 calendar days.
  - D. Consultation with HA during Review Period. Although HAs are responsible for submitting approvable Annual Submissions, the Department believes that it is in the best interest of the CGP to work cooperatively with HAs to maximize approval of the Annual Submissions. 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 Annual Submission meets the statutory/regulatory criteria for disapproval, the FO is responsible for disapproving the Annual Submission within the 75-day review period.

- E. Rejection of Annual Submission for Review. If the HA has submitted an Annual Submission which is not complete under subparagraph B, the FO shall notify the HA within 14 calendar days of its receipt that the Annual Submission has been rejected for review and that the review clock has stopped. The FO shall indicate all the reasons for rejection, the modifications required to qualify the Annual Submission 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 Annual Submission 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 Annual Submission for review in that FFY on the basis that there is insufficient time for HUD review. Headquarters shall reallocate the HA's annual formula funds to all CGP agencies in accordance with the formula under Chapter 3 in the subsequent FFY.

7-3. HUD REVIEW CRITERIA. Under the CGP, the HA, in consultation with residents and local/tribal government, is responsible for development of the Annual Submission which identifies the work to be funded with the current year grant. 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 Annual Submission 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 Annual Submission 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 Annual Submission, contained in Appendix 7-1, and include the completed Checklist in each HA's file.

- A. Plainly Inconsistent with Comprehensive Plan. The FO determines that the activities and expenditures proposed in the Annual Statement are plainly inconsistent with the HA's approved Comprehensive Plan.

Example: The HA has included kitchen renovation for a particular development in the Annual Statement, but "kitchens", as a major work category, was not included in the Physical Needs Assessment for that development. This is a basis for disapproval. Unless the Physical Needs Assessment has been amended to include the new physical needs, the new needs may not be included in the Five-Year Action Plan or Annual Statement.

Example: The HA has included implementing a preventative maintenance program as a HA-wide management improvement in the Annual Statement, but "improving maintenances, as a major work category, was not included in the Management Needs Assessment. This is a basis for disapproval. Unless the Management Needs Assessment has been amended to include the new management needs, the new needs may not be included in the Five-Year Action Plan or Annual Statement.

- B. Contradiction of HA Board Resolution. The FO has evidence which tends to challenge, in a substantial manner, the certifications contained in the HA Board Resolution, as required by paragraph 4-12. Such evidence may include the following items:

1. A pattern of substantiated complaints from residents that they did not have an opportunity to express their views or did not have their views considered by the HA.

Example: The HA has conducted an advance meeting for resident groups and a public hearing on the Annual Submission, but the FO has received numerous complaints that the HA did not consider resident views. The HA's summary of general issues raised during the public comment process and response to those issues indicate that the HA did consider the views of residents, but was not able to accept all

resident recommendations for funding priorities. There is no evidence that the HA failed to consult with or

consider the views of residents. Therefore, there is no basis for disapproval.

2. Failure to address work items that are needed to correct emergency work, as defined in paragraph 1-6, or to meet statutory or other legally mandated requirements, as identified by the HA in its Comprehensive Plan.
3. Failure to address Section 504 accessibility requirements when there are substantial or other alterations, as required by 24 CFR 8.23.
4. Failure to carry out the approved modernization in a timely, efficient, and economical manner, including revision of implementation schedules where delay was within the HA's control.

Example: The Performance and Evaluation Reports indicate that the HA is not meeting its target dates for fund obligation and expenditure and the reasons for delay are within the HA's control. This is a reason for approval with issuance of a corrective action order since the HA is not implementing its approved annual grants in a timely manner.

5. Certain proposed activities or expenditures are inconsistent with the requirements of NEPA and related environmental authorities under '968.110(c) and (d). Refer to paragraph 7-4.

Example: The HUD monitoring review indicates that there is a high level of noise at a particular development due to its location next to an interstate highway. The Annual Statement indicates that the HA is planning site improvement work, but no barriers or plantings for noise attenuation. Since the nature of the site work requires that the noise level be addressed, and the Annual Statement does not include noise attenuation measures, this is a basis for disapproval.

6. Certain proposed expenditures duplicate funding already provided for the same work item or activity. This is a basis for disapproval.

Example: The HA is proposing to use CGP funds to reimburse costs already incurred in prior year operating budgets.

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7. Work proposed by the HA is ineligible or exceeds the cost limitations in paragraph 2-19. This is a basis for disapproval.

Note: The FO shall review the Five-Year Action Plan and any proposed amendments to the Comprehensive Plan in accordance with the review criteria in paragraph 5-4.

7-4. ENVIRONMENTAL REVIEW. For each development proposed for funding in the Five-Year Action Plan, including the Annual Statement, either HUD under 24 CFR Part 50 or a responsible entity under 24 CFR Part 58 shall review the environmental impact of the modernization activities under the National Environmental Policy Act (NEPA) and related environmental laws, orders and regulations.

A. Environmental Review by HUD. During the 75-day review period, the FO shall complete the environmental review. Refer to Appendix 1-5 for additional guidance on expediting the review process.

1. Required Modifications. Where modifications to the Annual Statement or Five-Year Action Plan are necessary to ensure compliance with 24 CFR Part 50, the FO may request the HA by telephone to make the necessary modifications and resubmit the applicable documents or portions of documents. If the HA does not resubmit in a timely manner, the FO shall proceed with the written notification of disapproval within the 75-day review period.

2. Environmental Assessment for Compliance with NEPA and Related Laws, Orders and Regulations.

a. An environmental assessment is required for each development with less than 2,500 units, where the proposed modernization meets any one of the following criteria:

(1) The number of dwelling units in the affected buildings is changed by more than 20%. Increases will occur where larger size units are converted into smaller size units; or

(2) Land uses are changed from residential to nonresidential or vice versa. The conversion of dwelling units to community, management or maintenance space or new construction of such space on the existing site does not change the basic residential nature of the land use; or

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(3) The proposed modernization costs 75% or more of the total estimated replacement cost of the development after modernization; or

- (4) The proposed modernization involves the demolition of a building, or parts of a building, containing dwelling units.
    - b. FO PIH staff shall complete Form HUD-4128, Environmental Assessment for Subdivision and Multifamily Projects (known as the long form), before the end of the 75-day review period. Where 200 or more units are involved, the Field Office Environmental Clearance Officer (ECO) also shall sign the form. Where fewer than 200 units are involved, FO PIH staff shall send a copy of the completed form to the ECO for informational purposes.
  3. Environmental Review for Compliance with Related Laws, Orders and Regulations.
    - a. An environmental review is required for each development with less than 2,500 units, where none of the criteria in subparagraph A2a is present.
    - b. FO PIH staff shall complete Form HUD-4128.1, Compliance and LAC Conditions Record (known as the short form), before the end of the 75-day review period. FO PIH staff shall document the reasons for and source of information used in arriving at each conclusion on the form and send a copy of the completed form to the ECO for informational purposes.
    - c. Since developments may be proposed for modernization work on an annual basis, the FO may maintain the completed Forms HUD-4128.1 and supporting documentation in a separate file for each HA to facilitate required reviews in subsequent FFYs.
  4. Environmental Impact Statement (EIS). The FO shall prepare an EIS for each development where dictated by the results of the environmental assessment or for each development which has 2,500 or more units, unless: (a) an environmental assessment under subparagraph A2a is not required; or (b) it is determined, as a result of an environmental assessment or in preparing a draft EIS that the modernization will not have a significant impact on the human environment; in

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that case, FO PIH staff shall contact the ECO for procedures.

- B. Environmental Review by Responsible Entity. Effective 10/14/96, the environmental review may be conducted by a

responsible entity, rather than by the FO, under 24 CFR Part 58. The HA negotiates an arrangement with the unit of general local government in which the developments are located for conduct of the environmental review, unless the FO approves an alternative arrangement.

1. Responsible Entity. For PHAS, the responsible entity is the unit of general local government within which the development is located that exercises land use responsibility or, if the FO determines this infeasible, the county or the State. For IHAs, the responsible entity is the Indian tribe, or in the case of IHAs in Alaska, the Alaska native village, state or local government. If the responsible entity is unable or unwilling to conduct the environmental review during the 75-day review period, the FO itself shall conduct the environmental review.
2. Environmental Review Record (ERR). The responsible entity must maintain a written record of the environmental review undertaken for each development.
3. Request for Release of Funds and Certification. The responsible entity shall prepare and forward to the HA the request for release of funds (RROF) and certification. The HA, in turn, shall forward the documents to the FO. Until the FO has approved the release of funds, the HA shall refrain from undertaking any physical activities or choice limiting actions, such as obligating or expending funds.

7-5. HUD ACTION .

A. Approval.

1. Processing Instructions. Refer to Chapter 8.
2. Advice. Refer to paragraph 12-9A.
3. Notice of Deficiency or Corrective Action Order. Refer to paragraph 12-9B.

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4. Compliance with Environmental Requirements. Where required consultation with another agency, such as the State Historic Preservation Office, or the preparation of an EIS results in the inability of the responsible entity or the FO to determine compliance with 24 CFR Part 50 within the 75-day review period, the FO shall proceed to approve the Annual Submission, with the restriction that the HA may not obligate funds for the activity or activities in question until compliance with 24 CFR Part 50 has been determined and the HA notified in writing of compliance.

5. Approval to Exceed 90% of Computed TDC. Refer to paragraph 4-8C.
- B. Disapproval. Where the FO is disapproving the Annual Submission, or any amendment to the Annual Statement, the FO letter shall state all the reasons for disapproval, the modifications required to make the Annual Submission or Annual Statement 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 an disapproval letters to Headquarters.
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 Annual Submission was previously conducted. If the HA fails to obtain approval of the Annual Submission by the end of the FFY, HUD shall reallocate such funds to all CGP agencies in accordance with the formula under Chapter 3 in the subsequent FFY.
  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. Where modifications are necessary to ensure that all work items are eligible, to meet NEPA and other statutory requirements, or for other reasons, the FO may request the HA by telephone to make the necessary modifications and resubmit the applicable documents or portions of documents within the 75-day review period. If the HA does not resubmit in a timely manner, the FO shall proceed with the written notification of disapproval.
- C. Notification to CPD. After approval of the Annual Statements, FO PIH staff shall notify Community Planning and Development (CPD)

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staff of any HAs with Annual Statements being approved which involve relocation and acquisition (see Appendix 1-4).