

be available to the Authority for such purposes and subject to whatever applicable HUD regulations;

3. The Association shall be entitled to the use of office space in _____ at the Development without charge by the Authority for such use;

4. The Authority and the officers of the Association shall meet at a location convenient to both parties on the _____ (day) of each month to discuss matters of interest to either party;

5. In the event the parties later agree that the Association should assume management responsibilities now held by the Authority, a contract for such purpose will be negotiated by _____ the Association;

_____ terminate upon dissolution of the Association.

IN WITNESS HEREOF, the parties have executed this Agreement on _____, 19____.

Local Housing Authority
By (Official Title) _____
Homebuyers Association
By (Official Title) _____
WITNESSES: _____

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

Subpart A—Capital Fund

Sec.

905.10 Capital Fund formula (CFF).

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AUTHORITY: 42 U.S.C. 1437g, 42 U.S.C. 1437z-2, and 3535(d).

SOURCE: 65 FR 14426, March 16, 2000, unless otherwise noted.

Subpart A—Capital Fund

SOURCE: 75 FR 65208, Oct. 21, 2010, unless otherwise noted.

§ 905.10 Capital Fund formula (CFF).

(a) *General.* This section describes the formula for allocation of capital funds to PHAs. The formula is referred to as the Capital Fund formula (CFF).

(b) *Emergency reserve and use of amounts.* (1) In each Federal fiscal year after Federal Fiscal Year (FFY) 1999, from amounts approved in the appropriation act for funding under this part, HUD:

(i) Shall reserve an amount not to exceed that authorized by 42 U.S.C. 1437g(k) for—

(A) Use for assistance in connection with emergencies and other disasters, and

(B) Housing needs resulting from any settlement of litigation; and

(ii) May reserve such other amounts for other purposes authorized by 42 U.S.C. 1437g(k).

(2) Amounts set aside under paragraph (b) of this section may be used for assistance for any eligible use under the Capital Fund, Operating Fund, or tenant-based assistance in accordance with section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

(3) The use of any amounts as provided under paragraph (b) of this section relating to emergencies (other than disasters and housing needs resulting from settlement of litigation) shall be announced subsequently through FEDERAL REGISTER notice.

(c) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraph (b) of this section, HUD shall allocate the amount remaining in accordance with the CFF. The CFF measures the existing modernization needs and accrual needs of PHAs.

(d) *Allocation for existing modernization needs under the CFF.* HUD shall allocate one-half of the available Capital Fund amount based on the relative existing modernization needs of PHAs, determined in accordance with this paragraph (d) of this section.

(1) *For PHAs greater than or equal to 250 or more units in FFY 1999, except the New York City and Chicago Housing Authorities,* estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community

and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 4604.7);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 10.17);

(C) The proportion of units, as of FFY 1998, in a development in buildings completed in 1978 or earlier. In the case of acquired developments, HUD will use the Date of Full Availability (DOFA) date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: 4965.4);

(D) The cost index of rehabilitating property in the area as of FFY 1999. (Equation co-efficient: -10608);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 2703.9);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: -269.4);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: -1709.5);

(H) The PHA is located in the mid-west census region as defined by the Census Bureau. (Equation co-efficient: 246.2)

(ii) An equation constant of 13851.

(A) *Newly constructed units*. Units with a DOFA date of October 1, 1991, or thereafter, will be considered to have a zero existing modernization need.

(B) *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 existing modernization need.

(2) *For New York City and Chicago Housing Authorities, based on a large sample of direct inspections*. For purposes of this formula, prior to the cost calibration in paragraph (d)(4) of this section, the number used for the existing modernization need of family developments is \$16,680 in New York, and

\$24,286 in Chicago, and the number for elderly developments is \$14,622 in New York, and \$16,912 in Chicago.

(i) *Newly constructed units*. Units with a DOFA date of October 1, 1991, or thereafter, will be considered to have a zero existing modernization need.

(ii) *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 existing modernization need.

(3) *For PHAs with fewer than 250 units in FFY 1999*, estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 1427.1);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 24.3);

(C) The proportion of units, as of FFY 1998, in a development in buildings completed in 1978 or earlier. 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. (Equation co-efficient: -1389.7);

(D) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation co-efficient: -20163);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 6157.7);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 4379.2);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: 3747.7);

(H) The PHA is located in the mid-west census region as defined by the Census Bureau. (Equation co-efficient: -2073.5)

(ii) An equation constant of 24762.

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(A) *Newly constructed units.* Units with a DOFA date of October 1, 1991, or thereafter, will be considered to have a zero existing modernization need.

(B) *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 existing modernization need.

(4) *Calibration of existing modernization need for cost index of rehabilitating property in the area.* The estimated existing modernization need, as determined under paragraphs (d)(1), (d)(2) or (d)(3) of this section, shall be adjusted by the values of the cost index of rehabilitating property in the area.

(e) *Allocation for accrual needs under the CFF.* HUD shall allocate the other half of the remaining Capital Fund amount based on the relative accrual needs of PHAs, determined in accordance with paragraph (e) of this section.

(1) *For PHAs greater than or equal to 250 or more units, except the New York City and Chicago Housing Authorities,* estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 324.0);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 93.3);

(C) The age of a development as of FFY 1998, as determined by the DOFA date. 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. (Equation co-efficient: -7.8);

(D) Whether the development is a family development. (Equation co-efficient: 184.5);

(E) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation co-efficient: -252.8);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census

Bureau during FFY 1996. (Equation co-efficient: -121.3);

(G) PHA size of 6600 or more units in FFY 1999. (Equation co-efficient: -150.7);

(H) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 28.4);

(I) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: -116.9);

(J) The PHA is located in the mid-west census region as defined by the Census Bureau. (Equation co-efficient: 60.7)

(ii) An equation constant of 1371.9,

(2) *For New York City and Chicago Housing Authorities, based on a large sample of direct inspections.* For purposes of this formula, prior to the cost calibration in paragraph (e)(4) of this section the number used for the accrual need of family developments is \$1,395 in New York, and \$1,251 in Chicago, and the number for elderly developments is \$734 in New York, and \$864 in Chicago.

(3) *For PHAs with fewer than 250 units,* estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 325.5);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 179.8);

(C) The age of a development as of FFY 1998, as determined by the DOFA date. In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: -9.0);

(D) Whether the development is a family development. (Equation co-efficient: 59.3);

(E) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation co-efficient: -1570.5);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation coefficient: -122.9);

(G) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: -564.0);

(H) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: -29.6);

(I) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: -418.3)

(ii) An equation constant of 3193.6.

(4) *Calibration of accrual need for the cost index of rehabilitating property in the area.* The estimated accrual need, as determined under either paragraph (e)(2) or (e)(3) of this section, shall be adjusted by the values of the cost index of rehabilitation.

(f) *Calculation of number of units—(1) General.* For purposes of determining the number of a PHA's public housing units, and the relative modernization needs of PHAs:

(i) HUD shall count as one unit:

(A) Each public housing and section 23 bond-financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under Turnkey III program. Units receiving operating subsidy only shall not be counted.

(B) Each existing unit under the Mutual Help program.

(ii) HUD shall add to the overall unit count units that are added to a PHA's inventory so long as the units are under ACC amendment and have reached DOFA by the date that HUD establishes for the Federal Fiscal Year in which the CFF is being run (hereafter called the "reporting date"). Any such increase in units shall result in an adjustment upwards in the number of units under the CFF. New units reaching DOFA after the reporting date will be counted for CFF purposes as of the following Federal Fiscal Year.

(2) *Replacement units.* Replacement units newly constructed as of and after October 1, 1998 that replace units in a development funded in FFY 1999 by the Comprehensive Grant formula system or the Comprehensive Improvement As-

sistance Program (CIAP) formula system will be given a new ACC number as a separate development and will be treated as a newly constructed development.

(3) *Conversion of units.* The total estimated need (total units times need per unit) of the development is unchanged by conversion of unit sizes within buildings.

(4) *Reduction of units.* For developments losing units as a result of demolition and disposition, the number of units on which capital funding is based will be the number of units reported as eligible for capital funding as of the reporting date. Units are eligible for funding until they are removed due to demolition and disposition in accordance with a schedule approved by HUD.

(g) *Computation of formula shares under the CFF—(1) Total estimated existing modernization need.* The total estimated existing modernization need of a PHA under the CFF is the result of multiplying for each development the PHA's total number of formula units by its estimated existing modernization need per unit, as determined by paragraph (d) of this section, and calculating the sum of these estimated development needs.

(2) *Total accrual need.* The total accrual need of a PHA under the CFF is the result of multiplying for each development the PHA's total number of formula units by its estimated accrual need per unit, as determined by paragraph (e) of this section, and calculating the sum of these estimated accrual needs.

(3) *PHA's formula share of existing modernization need.* A PHA's formula share of existing modernization need under the CFF is the PHA's total estimated existing modernization need divided by the total existing modernization need of all PHAs.

(4) *PHA's formula share of accrual need.* A PHA's formula share of accrual need under the CFF is the PHA's total estimated accrual need divided by the total existing accrual need of all PHAs.

(5) *PHA's formula share of capital need.* A PHA's formula share of capital need under the CFF is the average of the PHA's share of existing modernization need and its share of accrual need (by

which method each share is weighted 50%).

(h) *CFF capping.* (1) For units that are eligible for funding under the CFF (including replacement housing units discussed below) a PHA's CFF share will be its share of capital need, as determined under the CFF, subject to the condition that no PHA's CFF share for units funded under CFF can be less than 94% of its formula share had the FFY 1999 formula system been applied to these CFF eligible units. The FFY 1999 formula system is based upon the FFY 1999 Comprehensive Grant formula system for PHAs with 250 or more units in FFY 1999 and upon the FFY 1999 Comprehensive Improvement Assistance Program (CIAP) formula system for PHAs with fewer than 250 units in FFY 1999.

(2) For a Moving to Work PHA whose agreement provides that its capital formula share is to be calculated in accordance with the previously existing formula, the PHA's CFF share, during the term of the agreement, may be approximately the formula share that the PHA would have received had the FFY 1999 formula funding system been applied to the CFF eligible units.

(i) *Replacement housing factor to reflect formula need for developments with demolition and disposition occurring on or after October 1, 1998—(1) Replacement housing factor generally.* PHAs that have a reduction in units attributable to demolition and disposition of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the CFF calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (i)(5) of this section.

(2) *When applied.* The replacement housing factor will be added, where applicable:

(i) For the first 5 years after the reduction in units described in paragraph (i)(1) of this section, and

(ii) For an additional 5 years if the planning, leveraging, obligation and expenditure requirements are met. As a prior condition of a PHA's receipt of additional funds for replacement housing provided for the second 5-year period or any portion thereof, a PHA must obtain a firm commitment of sub-

stantial additional funds other than public housing funds for replacement housing, as determined by HUD.

(3) *Computation of replacement housing factor.* The replacement housing factor consists of the difference between the CFF share without the CFF share reduction of units attributable to demolition and disposition, and the CFF share that resulted after the reduction of units attributable to demolition and disposition.

(4) *Replacement housing funding in FFY 1998 and 1999.* Units that received replacement housing funding in FFY 1998 will be treated as if they had received two years of replacement housing funding by FFY 2000. Units that received replacement housing funding in FFY 1999 will be treated as if they had received one year of replacement housing funding as of FFY 2000.

(5) *PHA eligibility for replacement housing factor.* A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(i) The PHA requests the application of the replacement factor;

(ii) The PHA will use the funding in question only for replacement housing;

(iii) The PHA will use the restored funding that results from the use of the replacement factor to provide replacement housing in accordance with the PHA's five-year PHA plan, as approved by HUD under part 903 of this chapter;

(iv) The PHA has not received funding for public housing units that will replace the lost units under the public housing development, Major Reconstruction of Obsolete Public Housing, HOPE VI programs, or programs that otherwise provide for replacement with public housing units;

(v) The PHA, if designated troubled by HUD and not already under the direction of HUD or a court-appointed receiver, in accordance with part 902 of this chapter, uses an Alternative Management Entity as defined in part 902 of this chapter for development of replacement housing and complies with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(vi) The PHA undertakes any development of replacement housing in accordance with applicable HUD requirements and regulations.

(6) *Failure to provide replacement housing in a timely fashion.* (i) A PHA will be subject to the actions described in paragraph (i)(7)(ii) of this section if the PHA does not:

(A) Use the restored funding that results from the use of the replacement housing factor to provide replacement housing in a timely fashion, as provided in paragraph (i)(7)(i) of this section and in accordance with applicable HUD requirements and regulations; and

(B) Make reasonable progress on such use of the funding, in accordance with HUD requirements and regulations.

(ii) If a PHA fails to act as described in paragraph (i)(6)(i), HUD will require appropriate corrective action under these regulations; may recapture and reallocate the funds; or may take other appropriate action.

(7) *Requirement to obligate and expend replacement housing factor funds within specified period.* (i) In addition to the requirements otherwise applicable to obligation and expenditure of funds, PHAs are required to obligate assistance received as a result of the replacement housing factor within:

(A) 24 months from the date that funds become available to the PHA; or

(B) With specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing.

(ii) To the extent the PHA has not obligated any funds provided as a result of the replacement housing factor within the times required by this paragraph, or expended such funds within a reasonable time, HUD shall reduce the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor.

(j) *Performance reward factor.* (1) PHAs that are designated high performers under the Public Housing Assessment System (PHAS) for their most recent fiscal year can receive a performance bonus that is:

(i) 3% above their base formula amount in the first five years these awards are given (for any year in this 5-year period in which the performance reward is earned); and

(ii) 5% above their base formula amount in future years (for any year in

which the performance reward is earned).

(2) The performance bonus is subject only to the condition that no PHA will lose more than 5% of its base formula amount as a result of the redistribution of funding from non-high performers to high performers.

(k) *Eligible expenses.* (1) Eligible expenses include the following:

(i) Development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and the development of mixed-finance projects;

(ii) Vacancy reduction;

(iii) Addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment;

(iv) Planned code compliance;

(v) Management improvements;

(vi) Demolition and replacement;

(vii) Resident relocation;

(viii) Capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to improve resident participation;

(ix) Capital expenditures to improve the security and safety of residents; and

(x) Homeownership activities, including programs under section 32 of the 1937 Act (42 U.S.C. 1437z-4).

(2) Such assistance may involve the drawdown of funds on a schedule commensurate with construction draws for deposit into an interest earning escrow account to serve as collateral or credit enhancement for bonds issued by a public agency for the construction or rehabilitation of the development.

[65 FR 14426, March 16, 2000, as amended at 65 FR 25446, May 2, 2000]

§ 905.120 Penalties for slow obligation or expenditure of Capital Fund program assistance.

In addition to any other statutory, regulatory, or contractual sanctions available to HUD, the penalties for slow obligation or expenditure of CFP assistance will be applied as follows:

(a) *Obligation of amounts.* (1) Except as provided in paragraph (b) of this section, a PHA must obligate any assistance received under this part not later than 24 months after, as applicable:

(i) The date on which the funds become available to the PHA for obligation in the case of modernization; or

(ii) The date on which the PHA accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units.

(2) Notwithstanding paragraph (a)(1) of this section, any funds appropriated to a PHA for Fiscal Year 1997 or prior fiscal years shall be fully obligated by the PHA not later than September 30, 1999.

(b) *Exceptions to obligation requirement—(1) Extension before expiration of obligation period.* A PHA may request and HUD may approve a longer time-frame or HUD may, by prior approval granted before the expiration of the time period in paragraph (a) of this section, extend the time period under paragraph (a) of this section for an additional period not to exceed 12 months, based on:

(i) The size of the PHA;

(ii) The complexity of the capital program of the PHA;

(iii) Any limitation on the ability of the PHA to obligate the amounts allocated for the PHA from the Capital Fund in a timely manner as a result of state or local law; or

(iv) Such other factors as HUD determines to be relevant.

(2) *Extension of obligation period.* HUD may extend the time period under paragraph (a) of this section for a PHA, for such period as HUD determines to be necessary, if HUD determines that the failure of the agency to obligate assistance in a timely manner is attributable to:

(i) Litigation;

(ii) Obtaining approvals of the federal government or a state or local government;

(iii) Complying with environmental assessment and abatement requirements;

(iv) Relocating residents;

(v) An event beyond the control of the PHA; or

(vi) Any other reason established by HUD by notice published in the FEDERAL REGISTER.

(3) *Disregard of minimal unobligated amounts.* HUD will disregard the requirements of paragraph (a) of this section with respect to any unobligated amounts made available to a PHA, to the extent that the total of such amounts does not exceed 10 percent of the original amount made available to the PHA.

(c) *Effect of failure to comply—(1) Prohibition of new assistance.* A PHA will not be awarded CFP assistance for any month during any fiscal year in which the PHA has funds unobligated in violation of paragraph (a) or (b) of this section.

(2) *Withholding of assistance.* During any fiscal year described in paragraph (c)(1) of this section, HUD will withhold all assistance that would otherwise be provided to the PHA. If the PHA cures its failure to comply during the year, it shall be provided with the share attributable to the months remaining in the year.

(3) *Redistribution.* The total amount of any funds not provided PHAs by operation of this section shall be allocated for PHAs determined to be high-performing under the Public Housing Assessment System (at 24 CFR part 902) (or the applicable performance evaluation program for public housing).

(d) *Expenditure of amounts—(1) In general.* A PHA must spend any assistance received under this part not later than four years (plus the period of any extension approved by HUD under paragraph (b) of this section) after the date on which funds become available to the PHA for obligation.

(2) *Enforcement.* HUD will enforce the requirement of paragraph (d)(1) of this section through default remedies up to and including withdrawal of the CFP funding.

(e) *Right of recapture.* Any obligation entered into by a PHA is subject to the HUD's right to recapture the obligated amounts for violation by the PHA of the requirements of this section.

[68 FR 45731, Aug. 1, 2003, as amended at 75 FR 65208, Oct. 21, 2010]

Subpart B—D [Reserved]

Subpart E—Use of Capital Funds for Financing

SOURCE: 75 FR 65208, Oct. 21, 2010, unless otherwise noted.

§ 905.500 Purpose and description.

(a) This subpart provides the requirements necessary for a PHA to participate in the Capital Fund Financing Program (CFFP), under which the PHA may obtain HUD approval to borrow private capital and pledge a portion of its annual Capital Fund grant or public housing assets and other public housing property of the public housing agency as security.

(b) Under the CFFP, PHAs are permitted to borrow private capital to finance public housing development or modernization activities. A PHA may use a portion of its Capital Fund for debt service payments and usual and customary financing costs associated with public housing development or modernization (including public housing in mixed-finance developments). A PHA that undertakes such financing activities may, subject to HUD's written approval, grant a security interest in its future annual Capital Fund grants, which shall be subject to the appropriation of those funds by Congress. The PHA's financing activities are not obligations or liabilities of the Federal Government. The Federal Government does not assume any liability with respect to any such pledge of future appropriations, and the Federal Government neither guarantees nor provides any full faith and credit for these financing transactions.

§ 905.505 Program requirements.

(a) *Written approval.* A PHA shall obtain written HUD approval for all Capital Fund financing transactions that pledge, encumber, or otherwise provide a security interest in public housing assets or other property, including Capital Funds, and use Capital Funds for the payment of debt service or other financing costs. HUD approval shall be based on:

(1) The ability of the PHA to complete the financing transaction along with the associated improvements;

(2) The reasonableness of the provisions in the Capital Fund Financing

Proposal considering the other pledges or commitments of public housing assets, the PHA's capital needs, and the pledge being proposed; and

(3) Whether the PHA meets the requirements of this subpart.

(b) *Antideficiency.* Any pledge of future year Capital Fund grants under this section is subject to the availability of appropriations by Congress for that year. All financing documents related to future year Capital Fund amounts must include a statement that the pledging of funds is subject to the availability of appropriations.

(c) *Conditions on use—(1) Development.* Any public housing that is developed using amounts under this part (including proceeds from financing authorized under this part) shall be operated under the terms and conditions applicable to public housing during the 40-year period that begins on the date on which the project becomes available for occupancy, except as otherwise provided in the 1937 Act.

(2) *Modernization.* Any public housing or portion of public housing that is modernized using amounts under this part (including proceeds from financing authorized under this part) shall be maintained and operated during the 20-year period that begins on the latest date on which the modernization is completed, except as otherwise provided in the 1937 Act.

(3) *Applicability of latest expiration date.* Public housing subject to the use conditions described in paragraph (c) of this section, or to any other provision of law mandating the operation of housing as public housing for a specific length of time, shall be maintained and operated as required until the latest such expiration date.

(4) *Declaration of Trust.* All public housing rental projects must show evidence satisfactory to HUD of an effective Declaration of Trust being recorded in first position, meeting the requirements of paragraph (c) of this section and covering the term of the financing. If part of a mixed-finance project, this evidence will be with the mixed-finance evidentiary documents.

(d) *Public Housing Assessment System (PHAS) designation.* Generally, a PHA shall be designated a standard performer or high performer under PHAS

(24 CFR part 902), and must be a standard performer or higher on the management and financial condition indicators. HUD will consider requests from a PHA designated as troubled under PHAS when the PHA is able to show that it has developed appropriate management and financial capability and controls that demonstrate its ability to successfully undertake the Capital Fund Financing Proposal. The PHA must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). If a PHA has received a letter of findings, charge, or lawsuit involving ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, or Section 109 of the Housing and Community Development Act of 1974, and the letter of findings, charge, or lawsuit has not been resolved to HUD's satisfaction, then unless the Capital Fund Financing Proposal is part of a plan to address such findings, charge, or lawsuit, the PHA will not be eligible for financing pursuant to the CFFP. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings taken are sufficient to resolve the matter.

(e) *Management capacity.* A PHA shall have the capacity to undertake and administer private financing and construction or modernization of the size and type contemplated. In order to determine capacity, HUD may require the PHA to submit a management assessment conducted by an independent third party, in a form and manner prescribed by HUD.

(f) *Existing financing.* A PHA shall identify the nature and extent of any existing encumbrances, pledges, or other financing commitments of public housing funds undertaken by the PHA.

(g) *Need for financing.* (1) A PHA must complete a physical needs assessment at the project level, in the form and manner prescribed by HUD that covers the PHA's entire public housing portfolio for the term of the financing and that takes into consideration existing needs and the lifecycle repair and replacement of major building components. The activity to be financed must be identified as a need in the physical needs assessment.

(2) Based on the assessment under paragraph (g)(1) of this section, the PHA must demonstrate that the financing will not negatively impact the ability of the PHA to meet the ongoing needs of its public housing portfolio over the term of the financing. In making this demonstration, PHAs must reduce any projected future Capital Fund grants to account for planned or anticipated activities that would have the effect of reducing or otherwise limiting the availability of future Capital Fund grants. PHA projections must be detailed on the portfolio schedule form prescribed by HUD, and shall project a stabilized number of units (Stabilized Base Unit Count) to be reached in no more than 5 years after all planned or anticipated activities have been completed that would reduce future Capital Fund grants. PHAs must also take into consideration projected use of Capital Funds for other eligible activities under part 905, and may take into consideration alternative sources of financing that are available to help meet its needs.

(3) For PHAs that are proposing to borrow more than \$2 million on a cumulative basis, to the extent that:

(i) Capital and other eligible Capital Fund needs exceed projected Capital Fund program funding amounts, and the PHA is not leveraging non-public housing funds as part of its Capital Fund Financing Proposal transaction, then

(ii) The PHA must demonstrate that it has considered leveraging non-public housing funds, and state why the proposed financing is appropriate in light of alternative sources available.

(iii) Notwithstanding paragraphs (g)(3)(i) and (ii) of this section, PHAs that size their financing by utilizing only replacement housing factor (RHF) funds, or PHAs that propose to use their Capital Fund Financing Proposal proceeds as part of a mixed-finance modernization transaction, are not required to comply with § 905.505(g).

(h) *CFP Plan.* (1) The use of the CFFP proceeds shall be included in a form and manner as required by HUD for CFP planning and budgeting and in a same manner as a Capital Fund grant. The CFFP proceeds shall be included as a separate Capital Fund grant to the

same extent that PHAs are required to plan and budget Capital Fund grants. The use of Capital Funds for the payment of debt service and related costs shall be planned and budgeted as would other eligible uses of Capital Funds.

(2) As part of its Capital Fund Financing Proposal, the PHA shall submit a Capital Fund financing budget, in the form and manner required by HUD, detailing the proposed use of the Capital Fund Financing Proposal proceeds. There shall be no requirement for PHAs to submit a Capital Fund financing budget as part of their Capital Fund financing proceeds where the sizing of the financing is based upon the use of RHF funds for debt service, or where the Capital Fund Financing Proposal proceeds are being used as part of a mixed-finance transaction. Approval letters for mixed-finance and RHF-related Capital Fund financing transactions shall be conditioned upon the approval of the mixed-finance proposal, or, in the case of conventional development, upon the approval of the development proposal and the execution of an associated construction contract with which the Capital Fund financing proceeds would be used.

(3) The work financed with Capital Funds and described in the Capital Fund financing budget will be based on the physical needs assessment. The Capital Fund financing budget shall list the work items (e.g., roof replacement, window replacement, accessibility modifications) by development. These work items will constitute performance measures upon which the PHA's performance will be evaluated. A general representation of the work (e.g., "rehabilitation of the development") is not sufficient.

(4) The CFP Plan (submission (as described in paragraph (h) of this section) shall include a copy of the physical needs assessment described in §905.505(g).

(5) Financing proceeds under this part may be used only for the modernization or development of public housing and related costs including the modernization or development of non-dwelling space. Financing proceeds may not be used for administration or central office cost center costs (except for mixed-finance projects), manage-

ment improvements, or upon non-viable projects, such as those subject to required conversion. Financing proceeds may be used to reimburse predevelopment costs, but only to the extent they were incurred in conformance with applicable regulatory requirements.

(i) *Debt Coverage Percentage.* (1) Except as stated in §905.505(i)(2), a PHA shall not pledge more than 33 percent of its annual future Capital Fund grants for debt service payments, assuming level Capital Fund appropriations over the term of the debt obligation and any reduction attributable to activities projected by the PHA to occur during the term of the financing such as demolition, disposition, or conversion of public housing units or other occurrences that could limit the availability of Capital Funds, including a voluntary compliance agreement. This percentage of Capital Funds dedicated for debt service, taking into account adjustments for activities that would reduce the receipt of Capital Funds, is called the "Debt Coverage Percentage."

(2) A PHA may pledge up to 100 percent of any projected replacement housing factor (RHF) grants for debt service payments, provided that the pledge extends to the formula fund portion of its Capital Fund grants also, but that not more than 50 percent of its overall projected Capital Fund grants (including formula funds and RHF funds) are pledged. RHF projections shall account for any projected reductions in RHF over the term of the financing. Unless otherwise approved by HUD, PHAs shall be limited to sizing their loans based upon increments of RHF currently being received by the PHA. CFFP transactions pledging RHF funds shall include accelerated amortization provisions, requiring all RHF funds received by the PHA to pay debt service as those RHF funds are received. A RHF grant shall be used only to develop or pay financing costs for the development of replacement public housing units in accordance with §905.10.

(3) Subject to the reasonableness test in §905.505(a)(2), PHAs may exceed 33 percent when pledging existing Capital Fund grants and RHF grants for the

payment of debt service. Existing grants are grants that have been received by the PHA at the time of HUD's approval of the Capital Fund Financing Proposal.

(j) *Terms and conditions of financing.* The terms and conditions of all financing shall be reasonable based on current market conditions. The financing documents shall include the following, as applicable:

(1) *Term.* The term of the Capital Fund financing transaction shall not be more than 20 years. All Capital Fund financing transactions shall be fully amortizing. Bridge loans and other short-term loans are permitted; however, unless otherwise approved by HUD, the CFFP Financing transaction may not be structured in a manner that generates program income.

(2) *Acceleration.* Unless otherwise approved by HUD, the financing documents shall provide that HUD approval is required before a lender may accelerate a PHA's debt obligation, for default or otherwise.

(3) *Public housing assets.* A PHA may not pledge any public housing assets unless specifically approved in writing by HUD. PHAs seeking approval of a pledge of public housing assets must submit documentation to HUD that details the nature and priority of the pledge.

(4) *Variable interest rate.* All variable-rate transactions shall include an interest-rate cap. The financing documents must specify that the PHA shall not be liable to pay debt service with public housing funds, and that there shall be no recourse to public housing assets, beyond the interest-rate cap. The limitation on the pledge of Capital Funds specified in §905.505(i) shall be calculated based on the interest-rate cap.

(5) *Other pledges or commitments.* PHAs seeking approval of a pledge of public housing assets must describe the nature and extent of existing commitments or pledges of public housing assets, providing documentation of such other commitments or pledges to the extent required by HUD.

(6) *Terms and conditions.* Financing documents must include any other terms and conditions as required by HUD.

(k) *Fairness opinion.* The PHA shall provide an opinion, in a form and manner prescribed by HUD, from a qualified, independent, third-party financial advisor attesting that the terms and conditions of the proposed financing transaction are reasonable given current market conditions with respect to such matters as interest rate, fees, costs of issuance, call provisions, and reserve fund requirements.

(1) *Financial controls and construction management.* (1) The PHA shall have a financial control and construction management plan describing how the PHA will ensure that:

(i) Adequate controls are in place regarding the use of the Capital Fund financing proceeds; and

(ii) The improvements will be developed and completed in a timely manner consistent with the contract documents.

(2) This plan shall contain protocols and financial control mechanisms that address the design of the improvements, construction inspections, construction draws, and requisition approval checks and balances. A PHA that is designated troubled under PHAS, or other PHAs as determined by HUD, may be required to institute risk mitigation measures to ensure that the funds are used properly and for the purposes intended.

(m) *Work items.* To the extent that any changes in work items financed by Capital Fund financing proceeds meet or exceed the following threshold requirements determined by HUD, PHAs must obtain written approval of amendments to their Capital Fund financing budget from HUD:

(1) A change in the type of activity being financed (for example, if the approved Capital Fund financing budget contemplated the proceeds being used for modernization, but after the proposal is approved, the PHA decides instead to pursue development);

(2) A change in the project being modernized or developed with the proceeds;

(3) A reduction in 20 percent or more in the number of public housing units being modernized; or

(4) An increase of 20 percent or more of the cost of non-dwelling space.

(n) *Applicability of other Federal requirements.* The proceeds of the Capital Fund financing are subject to all laws, regulations, and other requirements applicable to the use of Capital Fund grants made under 24 CFR part 905, unless otherwise approved by HUD in writing. PHAs undertaking CFFP transactions shall be subject to the following requirements, which shall be further enumerated in a Capital Fund Financing Amendment to the Annual Contributions Contract (CFF ACC Amendment):

(1) Amounts payable to the PHA by HUD pursuant to the CFFP and pledged to the payment of debt service by the PHA shall be used exclusively for debt service in accordance with the debt service schedule approved by HUD and shall not be available for any other purpose;

(2) The financing does not constitute a debt or liability of HUD or the United States, the full faith and credit of the United States are not pledged to the payment of debt service, and debt service is not guaranteed by HUD or the United States;

(3) Nothing in this CFF ACC Amendment or 24 CFR part 905 is intended to diminish HUD's authority to administer, monitor, and regulate the public housing program, including HUD's authority to exercise any administrative sanction or remedy provided by law; provided, however, that except as required by law, HUD will not assert any claim or right under the ACC, including the exercise of administrative sanctions and remedies, if and to the extent that the effect of such claim or right would be to reduce the payment of Capital Fund moneys to the PHA below the level necessary to pay debt service or delay the time for payment of such moneys such that required amounts would not be available to pay debt service when due;

(4) The financing is subject to mandatory prepayment prior to the obligation end date and expenditure end date of the Capital Fund financing proceeds to the extent necessary for the Capital Fund Financing Proposal proceeds to comply with section 9(j) of the 1937 Act (42 U.S.C. 1437g(j)). Bond and loan documents shall include appropriate provisions such that prepayment shall be

made by the lender, trustee, or appropriate third-party servicer approved by HUD, without any action by HUD post-approval;

(5) HUD agrees, subject to the availability of appropriations, to approve immediately upon receipt from the PHA (subject to any legal requirements or constraints applicable at the time), a CFP Plan document (as described in 24 CFR 905.505(h)) and/or an annual CFF ACC Amendment, to the extent and in an amount sufficient to make the applicable debt service payment;

(6) Prior to cumulatively reducing its inventory of public housing units by more than 5 percent of the Stabilized Base Unit Count, if, after the removal of units from inventory, the Debt Coverage Percentage under §905.505(i)(1) would constitute more than 33 percent of future Capital Funds, the PHA shall prepay the financing such that the reduction in inventory shall not cause the Debt Coverage Percentage to increase. If the reduction in inventory is required by law or public housing requirements, the prepayment is not required to be made prior to the reduction in inventory, but instead shall be made as soon as possible after the PHA becomes aware of the requirement of law or public housing requirements, but only to the extent that Capital Funds are not otherwise needed by the PHA to address the health and safety issues or other requirements of law in the PHA's public housing portfolio, all as determined by HUD. For PHAs that size their loans based upon the projected receipt of RHF funds, prior to undertaking an activity that will reduce its RHF units below the number of units projected in the Capital Fund Financing Proposal as required by §905.505(i)(3), the PHA shall prepay its loan such that debt service does not exceed 100 percent of projected RHF after accounting for the reduction in RHF units, all as determined by HUD.

(o) *Performance measures.* Pursuant to 24 CFR 905.505(h) a PHA is required to identify in its CFP Plan documents specific items of work that will be accomplished using the proceeds of the proposed financing. The identified items, which shall be quantifiable, shall be the basis on which HUD evaluates a PHA's performance. HUD may

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also utilize the Capital Fund financing budget, and Capital Fund Financing Proposal approval documents as the basis to evaluate a PHA's performance. Failure to meet performance measures may result in:

(1) Failure to receive HUD approval for future financing transactions;

(2) Failure to be considered for future competitive grant programs; and

(3) Other sanctions HUD deems appropriate and authorized by law or regulation.

(p) *Reporting requirements.* (1) The use of the CFFP proceeds shall be reported in the same manner as a Capital Fund grant. The PHA shall submit a performance and evaluation report on a quarterly basis. PHAs that utilize their Capital Fund financing proceeds as part of a mixed-finance transaction, and PHAs that size their financing based upon RHF in their Capital Fund financing transactions, are not required to submit quarterly reports.

(2) Each CFFP transaction and/or development project is subject to fiscal closeout in the same manner of a Capital Fund grant. Fiscal closeout includes the submission of an Actual Modernization Cost Certificate (AMCC) or Actual Development Cost Certificate (ADCC), an audit, if applicable, a final quarterly report, and a final Performance and Evaluation report.

§ 905.507 Streamlined application requirements for standard and high-performing PHAs.

(a) PHAs with cumulative CFFP borrowings of less than \$2 million and that are standard or high performers under PHAs; PHAs that are high performers under PHAs with cumulative CFFP borrowings of less than \$20 million; PHAs that propose to use their CFFP proceeds in a mixed-finance transaction, or proposals where the sizing of the financing is based only upon the use of RHF funds for debt service, shall not be required to submit:

(1) A third-party management assessment under § 905.505(e);

(2) A third-party fairness opinion under § 905.505(k);

(3) An assurance of financial controls and construction management under § 905.505(l).

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(b) Notwithstanding § 905.507(a), if HUD determines that interest or other costs do not appear to meet industry norms, or other aspects of the proposal present atypical risks, HUD retains the discretion to require assessments, opinions, or controls, or to return the proposal.

§ 905.510 Submission requirements.

(a) All requests for HUD approval of CFFP transactions shall be submitted to the Office of Public and Indian Housing (PIH), Attention: Office of Capital Improvements, in such form and in such number of copies as designated by PIH through direct notice.

(b) Each Capital Fund Financing Proposal shall be tabbed and presented with the following information in the order listed:

(1) *PHA transmittal letter.* The PHA must submit a letter signed by the PHA Executive Director (or Chief Executive Officer, if applicable) briefly describing the proposed financing and use of proceeds, the percentage of Capital Funds being dedicated to debt service, the percent of the PHA's public housing units benefiting from the financing, and the impact of the financing upon the public housing portfolio, and transmit to HUD a request for approval of the CFFP transaction. The transmittal letter shall provide any additional information required pursuant to this subpart including, but not limited to:

(i) Describing the transaction being proposed;

(ii) Describing in detail any existing financing or similar commitments of public housing funds;

(iii) Describing and providing justification for significant financial or legal provisions, such as variable interest or acceleration provisions;

(iv) Describing construction management and financial controls.

(2) *Term sheet, table of contents, and contact information.* The PHA must submit the HUD-prescribed term sheet that describes the basic terms of the transaction and financing structure, including the proposed amount of the financing, the term, interest rates, security, and reserve requirements. A table of contents must identify the materials submitted, as well as list the

materials the PHA is not required to submit pursuant to this rule. Contact information for all of the participating parties is also required.

(3) *Financing schedules.* The PHA must submit financing schedules that include a debt service schedule, sources and uses schedule, and a portfolio schedule (including projections for RHF, as appropriate), and an adequacy-of-Capital Funds schedule, all in a format prescribed by HUD.

(4) *Other required submissions.* The following submissions must be incorporated in the proposal to the extent required to be submitted by this part: Capital fund financing budget, management assessment, fairness opinion, and physical needs assessment.

(5) *Financing documents.* The PHA must submit a complete set of the legal documents that the PHA will execute in connection with the CFFP transaction. The legal documents must identify the nature and extent of any security being provided, as well as the position of any security interest (e.g., first lien position, second lien position). The legal documents are to be submitted to HUD only after they have been negotiated and agreed upon by the parties to the transaction. HUD will not review preliminary documents that are still under negotiation.

(6) *Declaration of Trust requirements.* The PHA must submit evidence that the PHA has conformed to the Declaration of Trust requirements in accordance with this subpart.

(7) *Board resolution and counsel's opinion.* The PHA must submit evidence of a PHA Board resolution that authorizes the PHA to: Undertake the loan up to a specified amount, provide all security interests required by the loan, and repay the loan with Capital Funds (including RHF funds, when applicable) as required by the financing documents. The Board resolution must also provide authorization for the Executive Director or other executive staff to negotiate and enter into all legal documents required as part of the transaction. The PHA must submit PHA counsel's opinion, which opines that the PHA has the authority to enter into the transaction, and affirms that the transaction complies with the requirements of the 1937 Act, as amend-

ed; Federal regulations; and the ACC, as amended.

(8) *Depository Agreement and ACC.* The PHA must submit a Depository Agreement (form HUD-51999) and a CFF ACC Amendment.

(9) Other documents as required by HUD.

§ 905.515 HUD review and approval.

(a) After receipt of a Capital Fund Financing Proposal, HUD shall review the proposal for completeness. HUD will return to the PHA all incomplete or unapprovable proposals, identifying the deficiencies, and will not take any further action. HUD will also return proposals submitted by entities other than the PHA (e.g., the PHA's consultants). HUD shall review all complete proposals for compliance with the requirements under this subpart. HUD may require the PHA to make modifications to any of the CFFP documents submitted and may require the PHA to resubmit all or any portion of the proposal. After HUD determines that a proposal complies with all applicable requirements, HUD shall notify the PHA in writing of its approval and any condition(s) of the approval.

(b) (1) A copy or copies of the CFF ACC Amendment shall accompany the approval letter.

(2) Within 60 days of the date of HUD's approval of the transaction or, if HUD sets conditions on its approval, within 60 days of the date that the PHA satisfies such conditions (as evidenced by documentation retained in the PHA's file and available to HUD upon request), but in no event longer than 120 days after the HUD approval, unless the time has otherwise been extended by HUD in writing, the PHA must submit:

(i) Closing documents as directed by HUD; and

(ii) All documents required by HUD to take certain actions such as initiating debt service payments through HUD's automated systems.

(3) Failure to provide the required documents to HUD within the time frame required under § 905.515(b)(2) may result in HUD rescinding its approval.