Subpart E—Use of Capital Funds for Financing

§ 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