

§ 905.507

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).

24 CFR Ch. IX (4-1-13 Edition)

(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.