

in part 902 of this chapter, and complies with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(v) The PHA undertakes any eligible activities in accordance with applicable HUD requirements and regulations.

(5) *Requirement to obligate and expend DDTF funds within the specified period.*

(i) In addition to the requirements otherwise applicable to obligation and expenditure of Capital Funds, including 42 U.S.C. 1437g(j) and the terms of the appropriation from Congress, PHAs are required to obligate funds received as a result of the DDTF within 24 months from the date that funds become available to the PHA; or

(ii) To the extent the PHA has not obligated any funds provided as a result of the DDTF within the time frames required by this paragraph, or expended such funds within a reasonable time frame, HUD shall reduce the amount of DDTF to be provided to the PHA.

(k) *RHF Transition.* (1) PHAs that would be newly eligible for RHF in FFY 2014 will receive 5 years of DDTF.

(2) PHAs that received a portion of a first increment RHF grant in FY 2013, for units removed from inventory prior to the reporting date of June 30, 2012, will receive up to 10 years of funding consisting of the remainder of first-increment RHF, subject to the requirements of §905.400(i) of this part, and, if eligible, 5 years of DDTF, subject to the requirements of §905.400(j) of this part.

(3) PHAs that received a portion of a second increment RHF grant in FY 2013, for units removed from inventory prior to the reporting date of June 30, 2012, will continue to receive the remaining portion of the 5-year increment as a separate second increment RHF grant, as described in §905.400(i) of this part.

(l) *Performance reward factor.* (1) *High performer.* A PHA that is designated a high performer under the PHA's most recent final PHAS score may receive a performance bonus that is:

(i) Three (3) percent above its base formula amount in the first 5 years these awards are given (for any year in this 5-year period in which the performance reward is earned); or

(ii) Five (5) percent above its base formula amount in future years (for any year in which the performance reward is earned);

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

(3) *Redistribution.* The total amount of Capital Funds that HUD has recaptured or not allocated to PHAs as a sanction for violation of expenditure and obligation requirements shall be allocated to the PHAs that are designated high performers under PHAS.

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

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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