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CHAPTER 1 Introduction

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Understand the purpose of HUD's Capital Fund program
- Recognize the background and context of the Capital Fund final rule
- Understand certain definitions pertinent to the Capital Fund program

ONLINE RESOURCES

Additional resources and references for this course are available at http://NMAreferences.com. Click the Capital Fund Program link at the top of the web page to jump directly to the references. No login information is required.

OVERVIEW

24 CFR 964.225(h)

The Capital Fund Program (CFP) provides financial assistance in the form of grants to public housing agencies (PHAs) to carry out capital and management activities. Capital Fund (CF) grants can also be entered into with resident management corporations (RMCs).

Congress provides capital funds through annual appropriations. In order to receive a CFP grant, a PHA must meet three administrative prerequisites which include:

1. Validation of project-level information in HUD's data systems
2. An approved 5-Year Action Plan; and
3. A Capital Fund Annual Contributions Contract Amendment with HUD, referred to as the CF ACC Amendment.

The CFP was created by an amendment to the 1937 Act by the Quality Housing and Work Responsibility Act (QHWRA) in 1998, merging previous modernization and development programs. The Housing and Economic Recovery Act (HERA) of 2008 affected PHA's planning process for not only capital funds, but operating funds and Section 8 funds as well.

The regulatory consolidation of 24 CFR Part 905 incorporated the remaining applicable sections of Parts 941 and 968 of the CFR for HUD along with existing provisions of Part 905 which included the CF formula, eligible CF activities, CF obligation and expenditure requirements, and the Capital Fund Financing Program (CFFP). This consolidation of the regulations combines the Capital Fund requirements for modernization and development into a single regulation. These regulations also update and streamline many of the Capital Fund and development requirements, incorporate recent energy requirements, and direct more funding towards modernization by way of the new Demolition and Disposition Transitional Funding (DDTF).

TYPES OF CAPITAL FUND GRANTS

Type	Description
Formula	This type of grant is an allocation of capital funds to PHAs in accordance with the Capital Fund formula, as further described in Chapter 5. The Capital Fund formula factors modernization backlog (existing modernization needs) and accrual needs in the calculation.
Replacement Housing Factor (RHF)	RHF is being phased out and is to be replaced by the DDTF, which is not a separate grant, after a transition period, as further described in Chapter 5.
Demolition and Disposition Transitional Funding (DDTF)	DDTF provides a formula-based add-on, not a separate grant, to the Capital Fund grant for five years after a PHA has removed units from its inventory because of HUD-approved demolition or disposition. DDTF began in federal fiscal year 2014 and will replace the RHF grant, as further described in Chapter 5. PHAs will not get separate Capital Fund and DDTF grants.
Emergency and Non-Presidentially Declared Natural Disaster	Congress annually establishes a set-aside from the Capital Fund appropriation for emergencies and non-presidentially declared natural disasters. Grant funding is awarded on a first-come, first-served basis to PHAs applying pursuant to the procedures described in Chapter 3.
Emergency Safety and Security	From the emergency and non-presidentially declared natural disaster set-aside, Congress authorizes in HUD annual appropriation acts annual set asides to assist PHAs with threats to resident safety and security caused by a safety and security emergency. HUD awards these grants competitively based on a lottery of all applications that meet threshold requirements.
Capital Fund Education and Training Community Facilities (CFCF)	In previous HUD annual appropriation acts Congress authorized CFCF Capital Fund grants to be distributed competitively to PHAs for the construction, rehabilitation, or purchase of facilities to provide early childhood education, adult education, and job training programs for public housing residents. Currently, CFCF is not authorized for FY 2015.

Section 2 Background - Public Housing

Public housing is a $9 billion annual enterprise. There have been major events, some positive and some negative, that have shaped public housing (1.2 million units, 3,200 agencies) for about the past two decades.

Substantial progress has been made in ridding public housing of its most obsolete properties, and much new replacement housing has been built, often of quite high quality and often in mixed-income settings.

- Some of these demolished units have been replaced with Section 8 vouchers, which, depending on local market conditions, are not duplicate resources. A major contributing factor for Congress' readiness to tolerate the loss of units and unwillingness to fund hard replacement units was the dissatisfaction with the management performance of housing authorities over the years.
  - Implementation of a performance evaluation system under PHAS, while still evolving, can be credited with improvements in rent collections, occupancy levels, and the timely obligation of capital improvement dollars.
- There has been some significant regulatory reform, including the elimination of the requirements of one-for-one replacement, the maintenance of centralized waiting lists, and federally-mandated admissions preferences.

There remain, however, a number of significant challenges:

- **Physical**. Large parts of the inventory still need substantial work, requiring many times more funding than currently available through the annual Capital Fund program. There are also properties that simply lack effective demand - for example, senior buildings built mostly with efficiencies in soft markets. And, there is still no practical system of replacement reserves, or of borrowing and refinancing that leads to the updating of the stock over time.
- **Operating Funding**. Operating funding is too variable, dependent on annual appropriations. There are also inequities in the distribution of operating funds.

- **Isolation**. Until fairly recently, public housing remained isolated from the rest of the real estate community. This isolation robbed public housing of best practices, unnecessarily constrained the pool of personnel, and limited broader program support.
- **Management**. Too frequently, the quality of public housing management was poor. Although there are PHAs that are effective, and even outstanding, performers, the problem is large enough and deep enough to be systemic, both in its condition and its causes.

  The management challenge is particularly acute among larger agencies, resulting from a confluence of factors. PHAs often respond to local political environments and to federal program arrangements by developing defensive organizational structures that are out of sync with private practice and ill-suited to delivering effective property management services. Capital improvements, therefore, often cannot be sustained.
- **Oversight**. HUD oversight too often emphasized rule compliance and organization, not property performance.

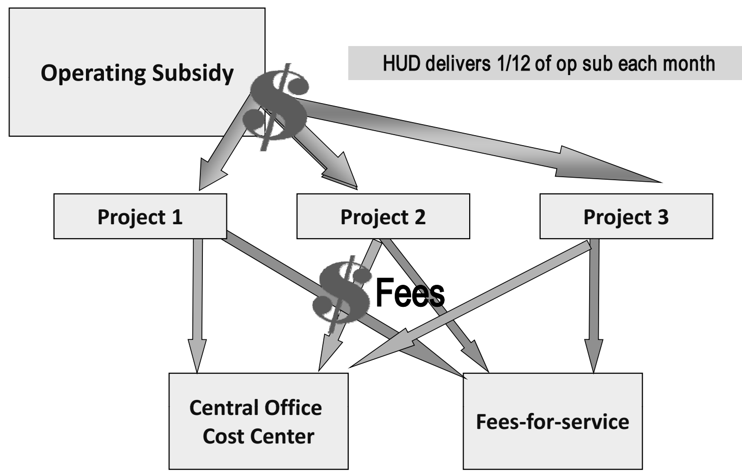
RESPONDING TO THE CHALLENGES IN PUBLIC HOUSING

In order to make real progress on the above fronts, public housing needed to become more “property-based” in terms of funding, management, and oversight, consistent with other federally-assisted and private sector housing.

PROJECT-BASED AND ASSET MANAGEMENT

QHWRA required HUD to come up with a new method to allocate public housing operating subsidies.

Historically, the operating subsidy was calculated for all public housing at an aggregate level. Under the new formula, the subsidy is calculated and allocated to each project. Funding goes directly to the projects and all other activities are supported by fees paid by the projects. Below is an illustration.



PHAs with 250 or more units (400 or more through appropriations acts) were required to transition to the new model project-based accounting, budgeting, and management. The Public Housing Assessment System (PHAS) is now more project-focused as well.

HUD defines full compliance with project-based and asset management by the following seven criteria:

1. **Project-based accounting**. The PHA produces monthly operating statements for each project - revenues and expenses vs. budget, including all fees to the central office cost center (COCC). Operating statements must reasonably reflect the financial performance of each project.
2. **Project-based management**. Property management services are arranged or provided in the best interest of the project, considering needs, cost, and responsiveness relative to local market standards.

3. **Central office cost center (COCC)**. All central office fees paid by the project (property management, asset management, bookkeeping, etc.) must be reasonable as defined by HUD. The central office must operate on the allowable fees.
4. **Centralized services**. Centralized functions that directly support projects (for example, centralized maintenance) are funded using a fee-for-service approach. Projects are charged an hourly rate (salary + benefits) and materials, which are reasonable based on data from the local market.
5. **Review of project performance**. The PHA systematically reviews information regarding the financial, physical, and management performance of each project, and identifies nonperforming properties. HUD defined nonperforming properties as:
   - PHAS physical score of less than 70
   - Significant crime and drug problems
   - Below 95 percent occupancy
   - TARS that exceeds 7 percent of monthly rent roll
   - Has utility consumption more than 120 percent of agency average
   - Has other major management problems.

   For any project defined as nonperforming, the PHA must have a management plan with a set of recommendations and measurable goals.
6. **Capital planning**. The PHA has a physical needs assessment and a 5-year Action Plan for each project. The PHA demonstrates a commitment to long-term reduction in energy and utility consumption.

7. **Risk management responsibilities related to regulatory compliance**. The PHA is not carrying out its responsibilities if it:
   - Is designated troubled under PHAS.
   - Has any outstanding FHEO compliance findings or a voluntary compliance agreement not implemented
   - Has no current energy audit
   - Has any outstanding Inspector General audit findings more than 6 months old without demonstrated progress
   - Is not in compliance with ACOP
   - Is not in compliance with PIC requirements
   - Is not meeting statutory capital fund obligation and expenditure deadlines
   - Has any other major compliance deficiency.

Section 3 Background of the Final Rule

The final rule combines and streamlines the former legacy public housing capital programs, including the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), and the Public Housing Development Program (which encompasses mixed-finance development), into the Capital Fund Program (CFP).

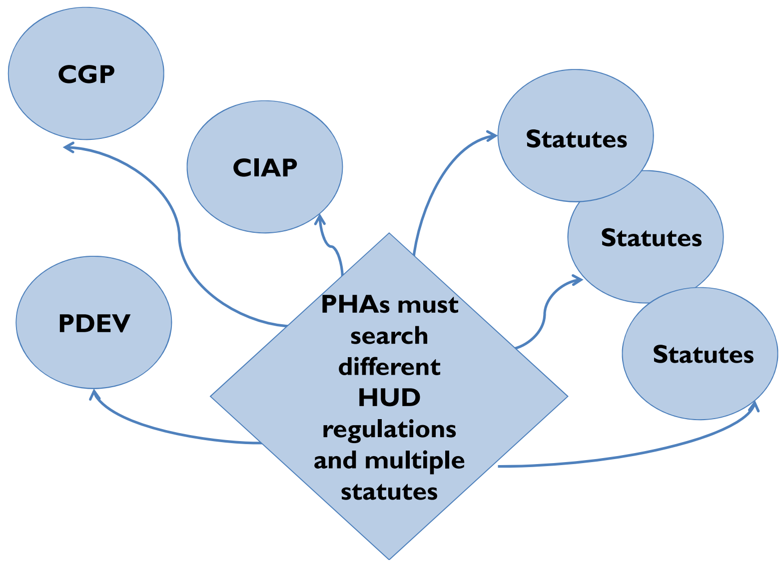
There are many similarities between the Capital Fund Program (CFP) and previous modernization programs, CIAP and Comprehensive Grant Programs.

The final rule implements section 9 of the United States Housing Act of 1937 (the 1937 Act), which created the Capital Fund program as part of the Quality Housing and Work Responsibility Act of 1998 (QHWRA).

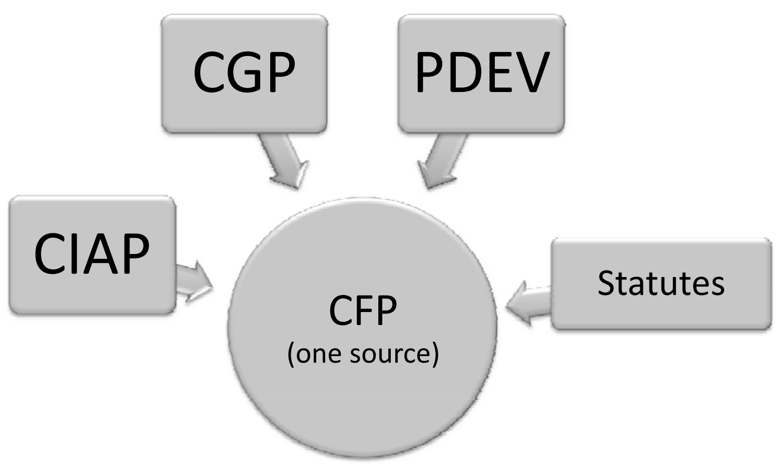
- Prior to the publication of the final rule, PHAs were required to look at three different regulations and two different statutes to determine the program requirements.
- Capital Fund was operating on interim guidance from HUD notices and an outdated 1996 guidebook for the CGP program, issued pre-QHWRA. This final rule will provide PHAs with clear a description of eligible activities, the planning process and the requirements for rehabilitation and development activities.

Previously, as required under the Quality Housing and Work Responsibility Act (QHWRA), the CFP was a component of the PHA Annual Plan and the Five-Year Plan.

Before Final Rule



After Final Rule



Section 4 Overview of the Capital Fund Final Rule

INTRODUCTION

- The final rule was published on October 24, 2013 and became effective November 25, 2013.
- The final rule is applicable to all PHAs that have public housing units under an Annual Contributions Contract (ACC) eligible to receive capital funds.
- The final rule combines and streamlines former legacy programs into the Capital Fund Program (CFP).
- Existing regulations for modernization (Part 968), and development and mixed finance (Part 941) are eliminated.
- Final rule in 24 CFR incorporates Capital Fund Financing Program (CFFP) regulation (published in the Federal Register 10/21/2010).

BACKGROUND

On February 7, 2011, HUD issued a proposed rule for the Public Housing Capital Fund program.

The purpose of a proposed rule is to obtain comments - from large, medium and small PHAs, resident groups, advocacy groups, and experts.

- The types of comments received can be found in the preamble of the final rule. A copy of the final rule is included in this book's reference section.

The proposed rule clarified that one of the purposes of a new rule would be to essentially conform HUD regulations affecting public housing capital activities with the program structure authorized by the Quality Housing and Work Responsibility Act of 1998 (QHWRA).

- QHWRA required a shift from the CIAP/CGP competitive/formula split to one Capital Fund allocated by formula to all agencies.

OVERVIEW OF PURPOSE AND BENEFITS OF THE FINAL RULE

As mentioned, the Capital Fund (CF) final rule consolidates and streamlines CF requirements.

One purpose of the rule is to enable more efficient and consistent management of the Capital Fund Program by HUD headquarters and field offices.

The rule also provides a better understanding of program requirements for PHAs and residents to more effectively use capital funds. Through the changes in this rule, more funds are directed toward modernization, given our limited fiscal environment.

The rule also incorporates HUD's energy efficiency strategic goals and decouples Capital Fund submission requirements from the larger PHA plan requirements

The rule simplifies mixed-finance requirements, and allows TDC exceptions for cost saving energy initiatives.

The final rule was followed by the Capital Fund Guidebook, published April 1, 2016, and the changes in the final rule and the guidebook are incorporated in this course book.

APPLICABILITY

The rule provides financial assistance to PHAs and Resident Management Corporations (RMCs) to make improvements and to develop public housing.

It applies to all PHAs that have public housing units under ACC

NEW PROCESS

The Capital Fund final rule decouples capital fund forms from the larger PHA plan submission. PHAs now submit their Capital Fund requirements with the ACC amendment.

There is now one budget submission. The final rule eliminates requirements to submit a preliminary budget and a final budget to HUD for review. New electronic submission and process requirements will be covered in detail in Chapter 3.

The final rule also allows PHAs to only hold only one public hearing

ORGANIZATION OF THE FINAL RULE

- Subpart A (905.100-) Purpose, general description, and other requirements
- Subpart B (905.200-) Eligible Activities (Eligible/Ineligible, Emergencies and Natural Disasters)
- Subpart C (905.300-) General Program Requirements (Submission, Obligations, Etc.)
- Subpart D (905.400-) Capital Fund Formula (RHF, DDTF)
- Subpart E (905.500-) Use of Capital Funds for Financing
- Subpart F (905.600-) Development Requirements (Program req., Mixed Finance, Dev Proposals, Pre-dev. Costs)
- Subpart G (905.700-) Other Security Interests. (Restrictions on pledging HUD assets)
- Subpart H (905.800-) Compliance, HUD Review, Penalties, and Sanctions

HUD REFERENCES AND LANGUAGE

MANDATORY REFERENCES

Mandatory references are:

- Statutes
- HUD regulations
- Current PIH notices
- Current HUD handbooks
- Forms required by HUD regulations (50058)
- Opinions or rulings by HUD's Office of General Counsel (OGC)
- Capital Fund Guidebook

A PHA's policies are required by a current law, regulation, notice, or handbook.

- CFR 960.253: “The PHA must…” or, “The PHA shall…”
- CFR 5.615(c)(5): “The PHA may not…”

When a HUD reference states,

- CFR 960.206(b)(2): "A PHA may…", this requires a discretionary policy decision made by the PHA.

Discretionary References

Discretionary references are:

- Guidebooks
- Notices that have expired
- Handbooks that have expired
- Recommendations from individual HUD staff

Discretionary policies are decisions made by PHAs within legal and regulatory limits to clarify regulations, as needed, without changing their intent, or provide guidance and direction where HUD is silent.

HUD regulations don't cover all areas of public housing and property management.

Section 5 Overview of Changes in the Final Rule

New Submission Requirements and Process

24 CFR 905.300

Submission requirements apply to qualified and non-qualified PHAs.

Capital Fund submissions are with the ACC Amendment annually.

24 CFR Part 903

Capital Fund submissions requirements are now decoupled from the PHA Plan.

CFP electronic submission and process will be covered in Chapter 3.

Revised Fees for Management Improvements

The final rule targets more funds to maintain the PHA's physical inventory.

- Reduces management improvements from 20 percent to 10 percent for asset management PHAs.
  - The rule phases down the management improvement cost limits over a 5-year period.
  - These and other costs will be covered in Chapter 2.

The rule clarifies eligible and ineligible costs for management improvements.

Eligible and Ineligible Activities

Eligible Activities

24 CFR 905.200

Eligible activities include modernization, development or financing activities that are:

- Specified in approved CFP 5-Year Action Plan
- Approved by HUD for emergency and natural disaster assistance

Management Improvements

The final rule clarifies eligible activities and costs under management improvements. PHAs must demonstrate a linkage between the management improvement and an identified management deficiency. Such activities are fundable only through the initial implementation period of the physical improvements.

Eligible activities include the following costs:

- Training for PHA personnel and procedures, including resident selection, rent collection, and eviction
- Improvements to management, financial, and accounting control systems of the PHA
- Improvement of resident and project security
- Activities that assure or foster equal opportunity
- Activities needed in conjunction with capital expenditures to facilitate programs to improve resident empowerment and economic self-sufficiency (e.g., costs for job training and resident business development activities)

Ineligible Activities and Costs

24 CFR 905.202

Ineligible activities and costs include:

- Costs not associated with a public housing project or development
- Public housing operating assistance, except as provided in 24 CFR 905.314(l)
- Direct provisions of social services through either force account or contract labor
- Cost funded by another source (duplication)

Demolition Disposition Transitional Funding (DDTF)

The final rule implements Demolition/Disposition Transitional Funding (DDTF), which can be used more flexibly to replace Replacement Housing Factor (RHF) grants.

- Allows PHAs to use the funding for any eligible Capital Fund activities, including modernization
- Eliminates separate RHF grants with separate use and reporting requirements
- By reducing eligibility from 10 years to five years, the final rule generally increases funding levels for PHA
- Provides a smooth RHF transition period that allows PHAs to continue receiving their RHF incremental funding for units removed prior to the effective date of November 25, 2013

Total Development Cost (TDC) Limit Exception for Energy Conservation and Efficiency

The rule allows PHAs to request a total development cost exception for integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency.

Streamlined Mixed Finance Requirements

The final rule requires submission of evidentiary documents for mixed finance projects at HUD's discretion.

The rule eliminates the requirement for a separate waiver to use identity of interest approvals as part of the development process.

ENERGY

ENERGY STAR REQUIREMENTS

The rule puts into regulation that Energy Star appliances are eligible Capital Fund costs.

STANDARDIZED ENERGY CODE

The rule implements the 009 International Energy Conservation Code (IECC), or ASHRAE standard 90.1-2010 for multifamily high-rises (four stories or higher, which is consistent with the standard used in over 40 states throughout the U.S.).

EMERGENCY AND NATURAL DISASTER

24 CFR 905.204

The final rule defines an emergency as an unforeseen or unpreventable event or occurrence that poses an immediate threat to the health and safety of the residents that must be corrected within one year of funding.

Public Housing Disaster Relief Act of 2008

For Capital Fund purposes, non-presidentially declared disasters are eligible if approved by HUD.

NEW PROVISIONS IN DESIGN AND CONSTRUCTION

All development projects must be designed and constructed in compliance with a national building code (i.e., International Code Council) and the 2009 International Energy Conservation Code (ECC) or ASHRAE standard 90.1-2010 for multifamily high-rises.

All modernization projects must be designed and constructed with cost-effective energy conservation measures identified in the PHA's most recently updated energy audit.

PHAs must purchase appliances that are Energy Star or Federal Energy Management Program designed products after performing life-cycle cost benefit analysis.

Total Development Cost (TDC) Limit Exceptions

Public housing funds may not be used to pay for Housing Construction Costs (HCC) and community renewal costs in excess of the TDC limit, except:

- PHAs may request a TDC exception for integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency.
- HUD will review requests to ensure that they would be cost-effective, i.e., up-front expenditures would be justified by future cost savings.

Compliance

All HUD approvals required under the final rule must be in writing.

Execution of the Capital Fund ACC Amendment and disbursement of CF grants are the PHA's certification that it will comply with 905 and the Public Housing Requirements.

- If a PHA is found to be in noncompliance, HUD can institute sanctions as described in Part 800 but the PHA can appeal.

Following is HUD's letter to Executive Directors, summarizing PHAs' responsibilities.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Dear Executive Director:

The Office of Public and Indian Housing (PIH) is pleased to inform you that the Capital Fund Program (CFP) Formula Grant awards for Federal Fiscal Year (FFY) 2020 have been posted to the FFY 2020 Capital Fund Processing Information Web site located at:

https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund/2020pi

We recommend that you bookmark this Web site for future reference. On the Web site, you will also find guidance on FFY 2020 processing of Capital Fund grants as well as a timeline of key processing dates. In order to ensure that your PHA has access to its Capital Funds as soon as possible, please comply with the timeline that has been established.

In accordance with Public Law 116-94, Division H, Title II, Section 235 (The Further Consolidated Appropriations Act, 2020), the person with authority to obligate the PHA (e.g. the Executive Director, Chief Executive Officer or another person with delegated authority) must sign the printed CFP the Annual Contributions Contract (ACC) Amendment. Three copies of the signed CFP ACC Amendment must be received by the HUD Field Office by the date identified in the year-specific Capital Fund Timeline posted to the web.

Please visit the CFP Web site to view the grant information and to access the ACC Amendment for your PHA. By signing the ACC Amendment, your PHA is agreeing to comply with the United States Housing Act of 1937, including the Capital Fund Program statutory requirements (Section 9 of the United States Housing Act of 1937, as amended), and the Capital Fund regulation effective November 25, 2013, found at 24 CFR Part 905.

Processing of ACC Amendments Received in Field Office After Due Date. The obligation of any ACC Amendments that are received in the Field Office after the due date established in the timeline will be delayed until after the Office of Capital Improvements (OCI) has completed the obligation on the FFY 2020 ACC Amendments that were received by the deadline. Any ACC Amendment(s) that are received in the Field Office after the due date will be subject to a delay in processing but will have the same obligation start date. PHAs that do not submit their ACC Amendment(s) by the due date will be given a second deadline to submit the signed ACC Amendment to the Field Office. If the PHA fails to meet the second deadline, the funds will not be available to the PHA, and HUD may de-reserve these funds.

www.hud.gov **espanol.hud.gov**

Data Universal Number System (DUNS) Number Registration in the System for Award Management (SAM). The DUNS registration in the System for Awards Management (SAM) is a requirement to receive Federal awards, and the registration must be active. If you have an expired DUNS number, your FY 2020 CFP grant will be awarded, but the funds will not be obligated in LOCCS until the registration is updated.

PIC Updates to email Addresses and Contact Information. When sending emails to PHAs and contacting the Executive Directors of PHAs, HUD uses the PIC database. For corrections to a PHA's email address or contact information, please make the appropriate update in the PIC data system. PHAs are responsible for ensuring that their email addresses and contact information are accurate in the Inventory Management System (IMS)/PIH Information Center (PIC).

If you have any questions after viewing the Capital Fund Program Awards or reading the additional processing guidance that is posted to the Web site, contact your local HUD Field Office or send an email to PIHOCI@HUD.gov with "Capital Fund Processing" as the subject.

Sincerely,

David Fleischman
Director, Capital Program Division

Section 6 Summary of Significant Changes in the Final Rule

Following is a synopsis of the purpose and major changes:

- Fifteen years after Congress authorized the "transformation" of mixed-finance public housing units in the event of a significant reduction in appropriations of public housing operating subsidy, the Capital Fund rule finally includes a regulation to implement this statutory provision. Transformation is now approved by HUD through submission and review of an "Alternative Management Plan" and the regulation requires specific evidence of the need for transformation to accompany the plan. An approved Alternative Management Plan allows public housing units to deviate from public housing requirements.
- The Capital Fund rule eliminates, after a transition period, the Replacement Housing Factor Fund grant (RHF) and creates the Demolition or Disposition Transitional Funding (DDTF) grant. DDTF grants will have a five-year term. The DDTF will be a part of the Capital Fund formula grant and is subject to the same requirements as the Capital Fund, not the requirements or limitations of RHF.
    - HUD has published special guidance for Moving to Work (MTW) agencies in connection with the transition to DDTF.
- HUD now requires the submission of fewer "evidentiary" documents in conjunction with its mixed-finance approval process. However, as a result, HUD has also augmented the certifications and assurances that PHAs must make in connection with mixed-finance closings.
- A provision in the Capital Fund rule requires PHAs to use all contract forms prescribed by HUD. The rule does not describe those forms, but other HUD guidance documents indicate when and which forms are required.

To summarize, the Capital Fund final rule:

- Decouples the CF process from the larger PHA Plan submission.
- Enables PHAs to only hold one public hearing.
- Allows PHAs to submit Capital Fund requirements with the CF ACC Amendment.
- Revises the definitions of Capital Fund Annual Contributions Contract (CF ACC); Public Housing Requirements; Qualified PHA; and public housing funds.
- Eliminates requirements to submit a preliminary budget and a final budget to HUD for review (one budget submission now required).
- Targets more funds to maintain the physical inventory:
    - By reducing management improvements from 20 percent to10 percent for asset management PHAs
- Phases down the management improvement cost limits over a five year period
    - Clarifies eligible uses for management improvements
- This includes training for PHA personnel in operations and procedures, improvement to PHA management, financial, and control systems, improvement of project security, activities assuring equal opportunity, and facilitating resident empowerment and self-sufficiency.
    - Clarifies that provision of direct social services and the costs for security guards or ongoing security services are not eligible management improvements.
- While activities that facilitate resident empowerment and self-sufficiency are considered eligible costs, this does not include the use of capital funds for the direct provision of social services (e.g., salaries for social workers or GED teachers).
- Similarly, “improvement of project security,” while eligible, does not include costs for security guards or ongoing security services. Capital funds may only be used for the initial capital (e.g., fencing, lights, and cameras).

- Clarifies that emergencies that are not identified in the 5-Year Action Plan are eligible costs.
- Revises the description of eligible amenities.
- Reduction of replacement funding timeframe from 10 years to 5 years makes more modernization funding available to PHAs without unit reductions
- DDTF, which replaces RHF, allows PHAs to use their replacement funding to maintain physical inventory
- Small PHAs are given additional time to prepare for the implementation of the requirement to submit a PNA.
- Existing regulations for modernization (Part 968) and development and mixed finance will be eliminated (Part 941)
- Final rule incorporates Capital Fund Financing Program regulation (published in the Federal Register as a final rule 10/21/10) (Reserved as Part 500)

Section 7 Definitions to Understand

The following definitions are important in order to understand Capital Fund requirements:

- *Administrative Costs* are any administrative costs, including salaries and employee benefit contributions, other than the Capital Fund Program Fee, which must be related to a specific public housing development or modernization project and detailed in the 5-Year Action Plan.
- *Annual Contributions Contract (ACC)* is the written contract between HUD and a PHA. The PHA agrees to administer the program in accordance with HUD regulations and requirements.
- *ACC Amendment* reflects specific changes made to a PHA's public housing inventory or funding.
    - An ACC Amendment may be a Capital Fund ACC Amendment (CFACC), a Mixed-Finance ACC Amendment, a Capital Fund Financing ACC Amendment, or other form of amendment specified by HUD.
- *Additional Project Costs* are the sum of the following HUD-approved costs related to the development of a public housing project, which are not included in the calculation of the Total Development Cost (TDC) limit, but are included in the maximum project cost. Additional project costs include the following:
    - Costs for the demolition or remediation of environmental hazards associated with public housing units that will not be rebuilt on the original site
    - Extraordinary site costs that have been verified by an independent state-registered, licensed engineer (e.g., removal of underground utility systems; replacement of off-site underground utility systems; extensive rock and/or soil removal and replacement; and amelioration of unusual site conditions, such as unusual slopes, terraces, water catchments, lakes, etc.)
    - Cost effective energy-efficiency measures in excess of standard building codes.

- *Capital Fund Program Fee* is a fee that may be charged to a Capital Fund grant by the PHA to cover costs associated with oversight and management of the CFP by the PHA's Central Office Cost Center (COCC). These costs include duties related to general capital planning, preparation of the Annual Plan, processing of the Line of Credit Control System (LOCCS), preparation of reports, drawing of funds, budgeting, accounting, and procurement.
  - Costs will be covered in more detail in Chapter 2.
- *Choice Neighborhoods Initiative (CNI)* is a successor to the HOPE VI program, and supports locally driven strategies to address struggling neighborhoods with distressed public or HUD-assisted housing through a comprehensive approach to neighborhood transformation.
- *Community Renewal Costs* consist of the sum of HUD-approved costs related to the development of a public housing project: These costs will be covered in more detail in Chapter 4
- *Cooperation Agreement* is a HUD-prescribed agreement between a PHA and its local governing body or bodies that:
  - Assures exemption from real and personal property taxes;
  - Provides for local support and services for the development and operation of public housing; and
  - Provides for PHA payments in lieu of taxes (PILOT).
- *Date of Full Availability* is the last day of the month in which substantially all (95 percent or more) of the units in a public housing project are available for occupancy.
- *Declaration of Restrictive Covenant* is a legal instrument that binds the PHA and the Owner Entity to develop mixed-finance projects in compliance with public housing requirements and restricts disposition of the property.
- *Declaration of Trust (DOT)* is the legal instrument that grants HUD an interest in public housing property.
- *Development* is any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment in connection with a public housing project.

- *Data Universal Number System (DUNS) Number* is a nine-digit number issued by Dun & Bradstreet that identifies business entities on a location-specific basis. As further described in Chapter 3, an effective DUNS Number is required for a complete Capital Fund Submission.
- *Emergency work* is Capital Fund-related physical work items that if not done pose an immediate threat to the health or safety of residents, and which must be completed within one year of funding. (Example: unsafe stairway)
  - Management improvements are not eligible as emergency work and must be covered by the CFP 5-Year Action Plan before the PHA may carry them out.
- *Energy audit* is a systematic review of the energy requirements and consumption for a property with the intent to identify potential opportunities for energy and water savings through improved operational efficiency or more efficient components.
- *Energy Performance Contract (EPC)* is an innovative financing technique that uses cost-savings from reduced energy consumption to repay the cost of installing energy conservation measures in accordance with Section 9(e) of the 1937 Act and 24 CFR 990.185.
- *Expenditure* is defined as Capital Funds disbursed by the PHA to pay for obligations incurred in connection with work included in a CFP 5-Year Action Plan that has been approved by the PHA Board and HUD.
  - Total funds expended means cash actually disbursed and does not include cash retained.
- *Expenditure End Date (EED)* is the final date that a PHA may expend (pay out) funds drawn down from LOCCS (contrast with the Disbursement End Date (DED), the final date that a PHA may submit vouchers for disbursement of capital funds).
- *Federal Fiscal Year (FFY)* begins each year on October 1 and ends on September 30 of the following year.
- *Force account labor* is labor employed directly by the PHA on either a permanent or temporary basis.

- *Fungibility*, as it relates to the Capital Fund, allows the PHA to substitute work items between any of the years within the latest approved CFP 5-Year Action Plan, without prior HUD approval.
- *Housing Construction Cost (HCC)* is the sum of the following HUD-approved costs related to the development of a public housing project:
  - Dwelling unit hard costs (including construction and equipment)
  - Builder's overhead and profit
  - The cost of extending utilities from the street to the public housing project
  - Finish landscaping
  - The payment of Davis-Bacon wage rates
- *Line of Credit Control System* (LOCCS) is the HUD grant disbursement system. Currently LOCCS provides disbursement controls for over 100 HUD grants.
- *Management Improvements* are noncapital activities that are project-specific or PHA-wide improvements needed to upgrade or improve the operation or maintenance of the PHA's projects, to promote energy conservation, to sustain physical improvements at those projects, or to correct management deficiencies.
- *Mixed-finance modernization* is a method to modernize public housing projects.
- *Obligation* is a binding agreement for work or financing that will result in outlays, immediately or in the future.
  - All obligations must be incorporated in the CFP 5-Year Action Plan approved by the PHA Board and HUD.
  - This includes funds obligated by the PHA for work to be performed by contract labor (contract award), or by force account labor (work actually started by PHA employees).
  - Capital funds identified in the PHA's CFP 5-Year Action Plan to be transferred to operations are obligated by the PHA once the funds have been budgeted and drawn down by the PHA. Once these funds are drawn down, they are subject to CFR 990 (Public Housing Operating Fund Program) requirements.

- *Obligation End Date (OED)* is the date, two years after HUD's execution of a particular CF ACC amendment on which a PHA must have obligated at least 90 percent of such Capital Fund grants.
- *Open grant* is any grant for which a cost certificate has not been submitted and which has not reached fiscal closeout.
- *Operating fund* is the assistance provided for the operation and management of public housing.
- *Owner entity* is the owner of public housing units. In mixed-finance developments, the Owner Entity may be the PHA, or may be an entity in which the PHA owns a partial interest, or may be an entity in which the PHA has no ownership interest. The Owner Entity is subject to the Capital Fund requirements.
- *Physical Needs Assessment (PNA)* is a systematic review of all the major physical components of property to result in a long-term schedule for replacement of each component and estimated capital costs required to meet the replacement need.
- *Public Housing funds* are any funds provided through the Capital Fund or Other Public Housing Development Sources, such as HOPE VI, Choice Neighborhoods, development funds, disposition proceeds, or any other funds appropriated by Congress for public housing.
- *Public Housing project* means low-income housing assisted under the 1937 Act, other than Section 8. The term "public housing" includes dwelling units in a mixed-finance project that are assisted by a public housing agency with public housing capital assistance or operating fund assistance. When used in reference to public housing, "project" means housing developed, acquired or assisted by a PHA under the 1937 Act, and the improvement of any such housing.

- *Public Housing Requirements* consist of the 1937 Act, HUD regulations, the Consolidated Annual Contributions Contract (including amendments), HUD notices, applicable federal statutes, applicable executive orders, and applicable regulatory requirements.
- *Qualified PHAs (903.3)* are PHAs that administer 550 or fewer units (the sum of public housing units and vouchers under Section 8(o), that are not designated as public housing troubled (42 U.S.C. 1437(d)(j)(2)) and do not have a failing score under SEMAP during the prior 12 months. PHAs that meet this definition are not required to file the PHA annual plan
- *Rental Assistance Demonstration (RAD)* is a demonstration program that permits public housing and other HUD-assisted properties to borrow long-term financing through conversions of public housing units to long-term, project-based Section 8 rental assistance.
- *Reconfiguration* is the altering of interior space of buildings, such as moving or removing interior walls to change the design, sizes, or number of units.
- *Reporting Date* is the deadline that HUD establishes each federal fiscal year by which any new Capital Fund units and those units reaching DOFA must be reported in order to be counted for Capital Fund formula purposes in that federal fiscal year.
- *Safety and Security Emergency* is any drug and/or criminal activity that threatens resident safety and security and must be corrected within one year of funding.
    - The threat of carbon monoxide poisoning is also considered an emergency safety need-repair, replacement, and installation of carbon monoxide detectors are now eligible activities for emergency safety and security funding (see Notices PIH 2019-22, PIH 2020-25 and PIH 2022-01).

- *Uniform Federal Accessibility Standards (UFAS)* are physical accessibility standards. Nan McKay & Associates' Physical Accessibility seminar covers these standards in detail.
- *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)*, as amended (Pub. L. 91-646, 42 U.S.C. §4601 et seq.), and the government-wide implementing regulations found at 49 CFR Part 24 provides the minimum federal requirements for the acquisition of real property and relocation of persons from their homes, businesses, and farms as a direct result of acquisition, rehabilitation, or demolition for federal and federally-assisted programs and projects.

Section 8 Chapter 1 Post-Test

1. The purpose of the Capital Fund (CF) final rule is to:
   a. Make modernization more difficult for PHAs
   b. Tie the Capital Fund process to the PHA Plan process
   c. Consolidate and streamline CF requirements
   d. All of the above
2. The Capital Fund requirements are applicable to all of the following:
   a. All PHAs, including HCV-only PHAs
   b. All PHAs with ACC public housing units
   c. Resident Advisory Boards (RABs)
   d. Private sector housing if subject to fair housing requirements
   e. All of the above
3. The Capital Fund process is tied to the PHA Plan process.
   a. True
   b. False
4. A PHA is now required to have separate public meetings for the PHA Plan and the Capital Fund plan.
   a. True
   b. False
5. The Capital Fund program requirements are now found in various statutes, regulations, notices, and guidance.
   a. True
   b. False
6. The Capital Fund final rule combines and streamlines former legacy programs into the Capital Fund program.
   a. True
   b. False

7. The Capital Fund can fund all disasters, including presidentially-declared disasters.
   a. True
   b. False
8. A description of public comments, with HUD response, can be found where in a final rule?
   a. Executive Summary
   b. Preamble
   c. Environmental Impact
   d. Regulatory section
9. The Capital Fund final rule is of relatively minor importance to public housing.
   a. True
   b. False
10. A mandatory reference from HUD is:
    a. A HUD handbook
    b. The Admissions & Continued Occupancy Policy (ACOP)
    c. Guidance from HUD staff
    d. A HUD guidebook
    e. All of the above
11. When a HUD regulation or mandatory reference states, "The PHA may…" it means that:
    a. Each PHA staff person may decide on a case-by-case basis how to handle the issue
    b. The PHA may decide on a daily basis how to handle the issue
    c. The PHA makes a written policy decision
    d. The PHA must obtain HUD approval before making a decision on this issue
    e. All of the above

12. When a HUD regulation or mandatory reference states, "The PHA may not…" it means that:
    a. Each PHA staff person may decide on a case-by-case basis how to handle the issue
    b. The PHA must obtain HUD permission before doing this
    c. The PHA is not authorized or allowed to do this
    d. The PHA may or may not decide on a daily basis how to handle the issue
    e. All of the above

CHAPTER 2 Eligible and Ineligible Activities and Costs

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify the eligible activities and costs under the Capital Fund final rule
- Recognize the ineligible activities and costs under the Capital Fund final rule
- Understand the new limits on using capital funds for management improvements
- Understand limits on PHAs' ability to use capital funds for operating expenditures
- Understand new rules for emergencies and natural disasters

Section 1 Background

Capital funds may only be used for activities that are described as eligible activities in 24 CFR 905.200 and are either specified in an approved 5-Year Action Plan, or approved by HUD for emergency work or work needed because of a natural disaster, other than presidentially declared disasters and emergencies.

Moving to Work PHAs may use capital funds for activities specified in their MTW Agreements, which permit PHAs to combine public housing capital funds with public housing operating funds and Housing Choice Voucher funds for purposes described in the MTW Agreement.

The goals for HUD's modernization and capital programs have always included:

- Projects that are safe, in physically sound condition and with all systems performing their intended design function
- Attractive, livable residential environments
- Energy efficient buildings and systems
- Increased security for tenant and project property, where required
- Projects that can be efficiently maintained at a reasonable operating cost after rehabilitation

HUD's modernization and capital programs have emphasized three main areas:

- ***Health and safety***, especially affecting tenants and PHA employees. These items, in most cases, require emergency attention. They include, but are not limited to, items of compliance with Federal, State and local health and safety codes, regulations and ordinances.
    - The Smoke Free Public Housing Rule is an example of a regulation that may involve the use of Capital Fund.

- ***Systems integrity***. These are items required to preserve the basic integrity of site and building systems, including conditions resulting from normal wear, abuse, and deferred maintenance, as well as conditions requiring major capital improvements.
- ***Energy conservation***. These are opportunities and devices determined to be necessary and/or cost-effective in a specific project by an energy audit. Before replacing relatively new or functional items, the PHA should consider all of the alternatives and exercise professional judgment as to whether such replacement is in the best interest of the project and the PHA.

Section 2 Eligible Activities and Costs

INTRODUCTION

24 CFR 905.200

Eligible activities can be arranged into three primary categories: (1) development, (2) financing, and (3) modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including compliance with accessible design and construction requirements), and the development of mixed-finance projects.

Notice PIH-2016-21 provides guidance on the electronic submission requirements for the Capital Fund Program action plans and budgets. As part of this change, HUD has begun to use a new Budget Line Item (BLI) structure that PHA's will use in the Energy Performance and Information Center system (EPIC) for electronic submissions and the LOCCS system for distribution of funds.

The chart below shows the BLI structure previously used on the left side of the page and the revised BLI structure on the right. HUD believes this change will reduce the need for budget revisions and be more in line with PHA business procedures.

Line Item	Name
0100	~~Reserved Budget~~
0110	~~Initial Budget~~
1406	Operations
1408	Management Improvement
1410	Adminstration
1411	Audit Cost
1430	Fees & Costs
1440	Site Acquisition
1450	Site Improvement
1460	Dwelling Structures
1465	Dwelling Equipment
1470	Non-Dwelling Structures
1475	Non-Dwelling Equipment
1485	Demolition
1490	~~Replacement Reserve~~
1492	MovingToWorkDemonstration
1495	Relocation Costs
1499	Development Activity
1500	Indian Housing Grants
1501	Collater Exp / Debt Srvc
1502	Contingency
1503	RAD-CFP
1504	RAD Investment Activity
9000	Debt Reserves
9001	Bond Debt Obligation
9002	Loan Debt Obligation
9900	Post Audit Adjustment

Line Item	Name
1406	Operations
1408	Management Improvement
1410	Adminstration
$\boxed{\textbf{1480}}$	$\boxed{\textbf{General Capital Activity}}$
1492	MovingToWorkDemonstration
1501	Collater Exp / Debt Srvc
1503	RAD-CFP
1504	RAD Investment Activity
9000	Debt Reserves
9001	Bond Debt Obligation
9002	Loan Debt Obligation
9900	Post Audit Adjustment

DEVELOPMENT

These are activities and related costs to add to or significantly reconfigure units in a PHA's public housing inventory, including:

- Construction and acquisition with or without rehab
- Any and all undertakings necessary for planning, design, financing, land acquisition, demolition, construction, or equipment, including development of public housing units, and buildings facilities, and/or related appurtenances (non dwelling facilities/spaces)
- Development of mixed-finance projects include the provision of public housing through a regulatory and operating agreement, master contract, individual lease, condominium or cooperative agreement, or equity interest

FINANCING

Includes debt and financing costs (such as origination fees, interest) incurred by PHAs for development or modernization of PHA projects that involves the use of capital funds, including, but not limited to:

1. Preparing applications for funding (such as for a Choice Neighborhoods grant or a tax credit allocation), whether or not the funding is awarded
2. Legal services for the PHA related to the development or modernization work
3. Construction period interest
4. Due diligence such as market study, environmental testing, title, and survey
5. Fairness opinion
6. Other development and modernization activities necessary to obtain financing

MODERNIZATION

24 CFR §905.200(b)

Several eligible activities may be grouped together as physical work, that is, work that is done on the physical structures, site, and grounds of a public housing property or structure.
These include:

- Demolition, reconfiguration, emergency activities, energy efficiency, non-routine maintenance, planned code compliance, and vacancy reduction.

Eligible physical work costs include, but are not limited to:

1. **Demolition costs**, including relocation and clearing the site for redevelopment
2. **Reconfiguration** of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units)
3. **Planning costs** related to a public housing modernization or development project, including architectural and engineering fees (such as costs of inspection, materials tests, and soil tests), consulting fees, permit fees, inspection costs, costs of submitting funding applications (including consultants such as grant writers), surveys, borings and soil test pits, photographs, blueprints, and specifications
4. **Site acquisition costs** related to a public housing development project, including amounts paid for land and existing improvements, including any amounts disbursed for the cost of boundary, property line, topographical, and utility surveys, including maps and perimeter descriptions.
5. **Site improvement costs** including grading, sewers, water systems, gas and electric distribution lines, streets, lawns and landscaping.
6. **Dwelling structure costs** related to a public housing development project, including normal excavation costs, plumbing, heating, and electrical work.
7. **Dwelling equipment costs** related to a public housing modernization or development project, including the cost of all ranges, refrigerators, shades, screens, and other similar equipment used for public housing units.

8. **Non-dwelling structure costs** related to a public housing modernization or development project, including the cost of structures, plumbing, heating, ventilating, and electrical installation for administration buildings and spaces for public housing administration buildings, community buildings, or related spaces for the use of the public housing program and public housing residents.
9. **Non-dwelling equipment costs** related to a public housing modernization or development project, such as for public housing Capital Fund Program related office furniture and equipment, community space, or computers.
10. **Purchase or leasing of vehicles**, subject to the restrictions identified in 2 CFR Part 200. The purchase or leasing of new or replacement vehicles is an eligible cost wherein the vehicle is needed on a full-time basis to administer/ or implement the physical and management improvements included in the CFP budget.

    Non-passenger vehicles, such as a truck or snow plow

    Passenger vehicles are an eligible cost only where the vehicle will be used on a full-time basis to carry out the Capital Fund Program
11. **Emergency activities** when related activities are identified as emergency work, that do not need to be covered by an approved 5-Year Action Plan.
12. **Energy efficiency activities** designed to promote energy conservation and efficiency measures
13. **Non-routine maintenance** which includes work items that ordinarily would be performed on a regular basis in the course of property management and maintenance, but have become substantial in scope because they have been postponed and involve expenditures that would otherwise materially distort the level trend of maintenance expenses. These activities also include the replacement of obsolete utility systems and dwelling equipment.

14. **Planned code compliance** which includes design and physical improvement costs associated with compliance with:
    - Local building code or the Uniform Physical Condition Standards (UPCS) under PHAS
        - Local building code is variable from locality to locality
    - National building code
    - The 2009 International Energy Conservation Code (IECC), or ASHRAE standard 90.1-2010
15. **Vacancy reduction,** which includes physical improvements to reduce the number of vacant public housing units, but excluding costs for routine vacant unit turnaround such as painting, cleaning, and minor repairs. Vacancy reduction activities must remedy a defined vacancy problem as detailed in a vacancy reduction program in the PHA's 5-Year Action Plan.

MANAGEMENT IMPROVEMENTS

Also referred to as "soft costs," these are noncapital activities that are project-specific or PHA-wide improvements needed to upgrade or improve the operation or maintenance of the PHA's projects, to promote energy conservation, to sustain physical improvements at those projects, or correct management deficiencies.

- Management improvement fees are phased down from 20 percent to 10 percent for larger PHAs, as explained later in this chapter.
- PHAs must be able to demonstrate the linkage between the management improvement and the correction of an identified management deficiency, including sustaining the physical improvements made with Capital Funds.
- *Note*: HUD encourages PHAs to make their best efforts , to hire residents as trainees, apprentices, or employees to carry out activities under this part, and to contract with resident-owned businesses under Section 3 of the Housing and Community Development Act of 1968. Section 3 will be discussed in more detail in Chapter 8.

- Management improvement costs are fundable only for the period of the physical improvements, unless a longer period, up to a maximum of four years, is clearly necessary to achieve performance targets.

Eligible activities include the following costs:

- Training for PHA personnel in operations and procedures, including resident selection, rent collection and eviction.
- Training for maintenance skill improvement.
- Improvements to management, financial, and accounting control systems of the PHA.
- Improvement of resident and project security, but not payment for security guards.
- Activities that assure or foster equal opportunity.
- Establish the implementation of a Section 3 coordinator position
- Activities needed in conjunction with capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents, including the costs for resident job training and resident business development activities to enable residents and their businesses to carry out Capital Fund-assisted activities.

Resident management costs not covered by the operating fund include:

- The cost of technical assistance to a resident council or RMC to assess feasibility of carrying out management functions for a specific development or developments;
- The cost to train residents in skills directly related to the operation and management of the development(s) for potential employment by the RMC;
- The cost to train RMC board members in community organization, board development, and leadership;
- The cost of the formation of an RMC; and
- Resident participation costs that promote more effective resident participation in the operation of the PHA in its Capital Fund activities, including costs for staff support, outreach, training, meeting and office space, childcare, transportation, and access to computers that are modest and reasonable.

ECONOMIC SELF-SUFFICIENCY

These are capital expenditures to facilitate programs to improve opportunities to increase the economic self-sufficiency of public housing residents.

RESIDENT RELOCATION AND MOBILITY COUNSELING DUE TO CAPITAL FUND ACTIVITIES

Relocation and other assistance (such as reimbursement to affected residents of reasonable out-of-pocket expenses incurred in connection with temporary relocation, including the cost of moving to and from temporary housing and any increase in month rent/utility costs) as may be required by public housing requirements for permanent or temporary relocation.

- As a direct result of modernization, development, rehab, demolition, disposition, reconfiguration, acquisition, or an emergency or disaster

SECURITY AND SAFETY

Capital expenditures designed to improve the security and safety of residents. *Note*: capital funds may not be used to fund the salaries and benefits of security guards or ongoing security costs as management improvements after the end of the implementation period of the physical improvements.

Eligible activities include, but are not limited to:

- Security cameras
- Security lights
- Security equipment (e.g., bars for windows, new doors and locks, fencing)
- Surveillance equipment
- Training of in-house security personnel as a management improvement (specific one time training, not ongoing training)
- Installation of security hardware and additional lighting
- Creation of defensible space through redesign of entrances, common areas, or other structural elements
- Provision of fencing around the perimeter of the development

OTHER COSTS

ADMINISTRATIVE COSTS

Any administrative costs, other than the Capital Fund Program Fee, must be related to a specific public housing development or modernization project and detailed in the CFP 5-Year Action Plan.

- **Salaries and employee benefit contributions**. The salaries and benefits of nontechnical and technical PHA personnel assigned full-time or part-time to Capital Fund activities are eligible costs.
- **Preparation of Documents**. Eligible costs include the preparation of Capital Fund Program required documents if the PHA uses an outside consultant for this work.
- **Resident Participation**. Eligible costs include those associated with ensuring the meaningful participation of residents in the development of the Annual and 5-Year Action Plans, and the implementation and monitoring of the approved Capital Fund Program. Such costs may include transportation and babysitting costs necessary for resident attendance at activities related to the Capital Fund Program.
- **Litigation Expenses**. Eligible costs include fees paid to attorneys for the handling of litigation related to the Capital Fund Program, where approved by the appropriate HUD Counsel. Prior HUD approval is required before the PHA may initiate a lawsuit, incur litigation expenses or enter into settlements. Such costs are charged to legal fees and costs (BLI 1430).

Homeownership

Activities associated with public housing homeownership, approved by HUD, such as:

- The cost of a study to assess the feasibility of converting rental units to homeownership units and the preparation of an application for the conversion to homeownership or for the sale of units
- Construction or acquisition of units for sale to eligible low income buyers
- Down payment assistance
- Closing cost assistance
- Subordinate mortgage loans
- Construction or permanent financing such as write downs for new construction, or acquisition with or without rehab
- Other activities in support of the primary homeownership activities above, including but not limited to:
  - Demolition to make way for new construction
  - Abatement of environmentally hazardous materials
  - Relocation assistance and mobility counseling
  - Homeownership counseling
  - Site improvements
  - Administrative and marketing costs

Capital Fund-Related Legal Costs

These are legal costs related to preparing property descriptions for the DOT, zoning, permitting, environmental review, procurement, and contracting.

ENERGY EFFICIENCY

Allowed costs include:

- Energy audit or updated energy audits to the extent operating funds are not available and the energy audit is included within a modernization program
- Integrated utility management and capital planning to promote energy conservation and efficiency measures
- Energy and water conservation measures identified in a PHA's most recently updated energy audit
- Improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards, or any revision of these, applicable at the time of installation, and by increasing energy efficiency and water conservation by other means as HUD determines appropriate.
- Installation and use of Energy Star appliances whenever energy systems, devices, and appliances are replaced, unless not cost-effective
- Utility and energy management system automation, and metering activities, including changing master meter systems to individually metered systems if installed as a part of a modernization activity to upgrade utility systems
  - For example, electric, water, or gas systems of the PHA

AUDIT

Costs of the annual audit attributable to the portion of the audit covering the CFP.

Capital Fund Program Fee

This fee covers costs associated with oversight and management of the CFP attributable to the COCC at PHAs that have converted to project-based asset management.

- The Capital Fund Program fee is one of several conventional fees paid to the COCC.
- The cost limits for the CFP fee remains at 10 percent of the annual Capital Fund grant.

These costs include duties related to capital planning, preparing the CFP Annual Statement/Performance and Evaluation Report, the monitoring of LOCCS, preparing reports, drawing funds, budgeting, accounting, and procuring construction and other miscellaneous contracts.

This fee is not intended to cover costs associated with construction supervisory and inspection functions that are considered a frontline cost of a project.

Emergency Activities

Capital Fund related activities identified as emergency work, whether or not the need is indicated in the CFP 5-Year Action Plan.

- These include physical work items that if not done pose an immediate threat to the health or safety of residents, and which must be completed within one year of funding.

Section 3 Ineligible Activities and Costs

The following list describes ineligible activities and costs for the Capital Fund Program:

1. **Not related to public housing**. PHAs may not spend capital funds on costs that are not associated with a public housing development or modernization project.
2. **Not in 5-Year Action Plan**. PHAs may not spend capital funds on activities and costs that are not included in the PHA's 5-Year Action Plan. *Note*: emergency work or assistance after a non-presidentially designated natural disaster that is not identified in the 5-Year Action Plan is an eligible cost.
3. **Not modest design**. PHAs may not spend capital funds on improvements or purchases that are not considered modest in design and cost because they include amenities, materials, and design in excess of what is customary for the locality, as determined by the PHA and HUD field office. These include, but are not limited to, swimming pools, saunas, whirlpool baths, and hot tubs.
4. **Not eligible based on OMB regulatory and circular guidance**. PHAs may not spend capital funds on any costs not authorized in 2 CFR Part 200 (formerly OMB Circular A-87 and 2 CFR Part 225), including indirect administrative costs, indemnification, and capitalizing reserves.
5. **Operating assistance**. PHAs may not spend capital funds on public housing operating assistance, except as provided through transfers to BLI 1406 (see further clarification below).

6. **Benefiting other programs**. Eligible costs that exceed the amount directly attributable to the public housing units when the physical or management improvements, including salaries and employee benefits and contributions, will benefit programs other than public housing, such as Section 8 Housing Choice Voucher, or local redevelopment programs.

   For example, the annual audit covers the breadth of the PHA's activities such as the operating fund, Capital Fund, Housing Choice Vouchers, and non-federally-funded activities. Only a pro rata share of the audit cost attributable to the Capital Fund may be charged to the Capital Fund.

7. **Ongoing security services** including:
   - The salaries and benefits for security guards, patrols, or police officers (either full-time, part-time, or after hours)
   - The purchase or leasing of vehicles for security personnel

8. **Supportive services**. The provision of supportive services to public housing residents, including:
   - The salaries and benefits or contract costs for service providers, including resident coordinators, case managers, social workers, nurses, chore service providers, supplemental police or probation services providers, and tutors
   - Health and wellness activities
   - Educational enrichment and recreational activities, including social organizations
   - Job development and placement services, including the cost of professional licenses, certifications and exams, and transportation assistance

9. **Duplicate funding.** An otherwise eligible cost that is funded by another source and would result in duplicate funding.

Cost and Other Limitations

Modernization Cost Limits

24 CFR 905.314(g)

A PHA may not modernize a public housing project if the modernization costs are more than 90 percent of the applicable Total Development Cost (TDC), also known as Reasonable Cost.

Exceptions to the TDC limitations are:

- Emergency work
- Essential maintenance necessary to keep a public housing project habitable until a demolition or disposition application is approved by HUD
- The costs of maintaining the safety and security of a site that is undergoing demolition.

Administrative Cost Limits and CFP Fee

24 CFR 905.314(h)

- **Administrative cost limits (for non-asset management PHAs)**. A PHA that is not subject to asset management cannot expend more than 10 percent of its annual Capital Fund grant on Administrative Costs, in accordance with the 5-Year Action Plan.
- **CFP Fee (for asset management PHAs)/ Modernization Fee Cap**. For modernization work, the PHA cannot budget or expend more than 10 percent of its annual Capital Fund grant on the CFP fee (paid to the COCC), in accordance with its 5-Year Action Plan. The 10 percent limit excludes any costs related to lead-based paint or asbestos testing, in-house architectural and engineering work, or other special soft costs required by state or local law.
- **Development**. For development work with Capital Fund and DDTF grants, the administrative cost limit chargeable by an asset management PHA is 3 percent of the total project budget, or, with HUD's approval, up to 6 percent of the total project budget.

MANAGEMENT IMPROVEMENT COST LIMITS.

In order to direct more capital funds towards modernization, the CFP final rule reduced the maximum percentage of an annual Capital Fund grant that may be used for management improvements identified in its 5-Year Action Plan from 20 percent to 10 percent, with scheduled annual reductions transitioning downward, as follows:

Federal Fiscal Year	Maximum % Allowed
2014	18%
2015	16%
2016	14%
2017	12%
2018 and later	10%

24 CFR 905.314(j)

A PHA may use force account labor, including materials and equipment for development and modernization activities if it is included in a 5-Year Action Plan that is approved by the PHA board of commissioners and HUD. HUD approval to use force account labor, including materials and equipment, is not required when the PHA is designated as a High Performer under PHAS.

TOTAL DEVELOPMENT COST (TDC) LIMIT

The TDC limit is calculated by HUD according to 24 CFR §905.314(c). HUD typically publishes updated TDC limits annually. The TDC limit is the maximum amount of public housing capital assistance that may be used for housing construction costs and community renewal costs on a project, absent a waiver from HUD.

PHAs may request an exception from the TDC limit only for energy efficiency, integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency.

Section 4 Fungibility of Funds

TRANSFERRING CAPITAL FUNDS TO OPERATING FUNDS

LARGE PHAS

A PHA with 250 or more public housing units may use no more than 20 percent of its annual Capital Fund grant for activities that are eligible under the Operating Fund.

ELIGIBLE SMALL PHAS

A PHA with less than 250 units, not designated as overall troubled or Capital Fund-troubled under PHAS, may use up to 100 percent of its annual Capital Fund grant for activities that are eligible under the Operating Fund.

Notice PIH 2016-18 (HA), issued November 14, 2016, Guidance on Full Flexibility for Small PHAs, provided clarifications and limitations on the definition of eligible small PHAs who can utilize full flexibility (“fungibility”).

Defining an Eligible Small PHA

PHAs receiving an overall PHAS score of less than 60 percent are designated as troubled and referred to as “Overall Troubled”.

PHAs receiving less than 50 percent under the PHAS CFP indicator are also designated as troubled and referred to as “Capital Fund Troubled”.

Small PHAs designated as Overall Troubled or Capital Fund Troubled, or both, are *ineligible for the flexibility of capital funds and operating funds*.

PHAs that are only SEMAP Troubled are not excluded from exercising full flexibility.

Requirements

Eligible small PHAs may use up to 100 percent of a CFP grant for operating activities if the PHA does not have debt service payments, significant capital needs, or emergency needs.

Debt service payments include any annual contributions pledged as payment of bonds or notes through the CFFP. PHAs with these obligations are ineligible to exercise full flexibility of capital and operating funds.

Eligible small PHAs seeking to exercise full flexibility must have an approved CFP 5-Year Action Plan that indicates the amount of each grant they intend to use for operating fund expenditures.

In addition, these PHAs must also submit a capital fund budget for each year, including as a work item the transfer of capital funds to operations for any applicable years.

Except in the case of emergency/disaster work, the PHA cannot use capital funds on any work not included in a HUD-approved CFP 5-Year Action Plan and amendments.

If, during a field office review, HUD determines an eligible small PHA has significant immediate capital needs (such as roof replacement, HVAC, plumbing or sewer, kitchen or bathroom fixtures), or any work that requires a significant investment of capital funds where deferment is likely to result in an emergency situation, or extending the useful life of a system is no longer cost effective, then that PHA is no longer eligible to exercise full flexibility.

HUD's assessments can include REAC physical condition scores, site visits, and comparisons of PHA spending and performance relative to regional levels.

If HUD determines the PHA has significant capital needs and is ineligible to exercise full flexibility, the PHA must submit a revised CFP 5-Year Action Plan.

Small PHAs ineligible to exercise full fungibility are subject to the 20 percent limitation on transfers of capital funds to operations.

SUMMARY

Number of Units	Percent of a CFP Grant That May Be Used for Operating Costs
250 or more units	Up to 20%
Less than 250 units and not designated as "overall troubled" or "Capital Fund troubled" under PHAS and no debt service payments, significant capital needs, and/or emergency needs	Up to 100%
Less than 250 units and designated as "overall troubled" or Capital Fund troubled"	Up to 20%

MOVING TO WORK PHAS

PHAs participating in the Moving to Work (MTW) program, subject to the terms of their specific MTW Agreements with HUD, have authority to combine capital funds with operating funds and Section 8 voucher funds for MTW purposes.

TRANSFERRING OPERATING FUNDS TO CAPITAL FUNDS

Notice PIH 2018-03, issued February 28, 2018, provided that PHAs operating public housing now have the flexibility to use a portion of their operating subsidies for capital activities, subject to HUD requirements. This funding option was originally authorized under the Housing Opportunities Through Modernization Act of 2016 (HOTMA).

- Beginning in calendar year (CY) 2018, PHAs may use up to 20 percent of their annual operating subsidy for Capital Fund Program (CFP) activities.
- HUD will publish the maximum amount of operating subsidy allowable (e.g., 20 percent) for CFP activities towards the end of each funding year.

- The requirements set forth in the notice do not apply to small, non-troubled agencies who are already eligible to use full flexibility between the operating and capital funds. They also do not apply to MTW agencies, who had flexibility prior to HOTMA, as mentioned above.

Requirements

PHAs who wish to exercise the flexibility to use operating subsidy for CFP purposes must follow the six-step process and procedures outlined in Notice PIH 2018-03.

PHAs may not use this flexibility as a mechanism to transfer operating subsidy from one project to another project. Therefore, the use of the Budget Line Item “1406—Operations” when budgeting this operating subsidy is not allowed.

For PHAs operating under an asset management model using a central office cost center (COCC) or fee for service approach, the COCC may not charge an additional and equivalent Capital Fund management fee on the operating subsidy used for CFP activities, since the PHA is already eligible for fees based on its operations. A Capital Fund management fee may only be charged to the PHA’s Capital Fund grant.

Financial Management

Operating subsidy identified for CFP activities is not subject to the two-year obligation or four-year expenditure requirements normally associated with a PHA's CFP grant. These funds remain operating subsidy with "expanded uses." However, PHAs must follow the requirements for 25 CFR Part 905 when using these funds.

There are no threshold requirements for the use of this flexibility, such as meeting minimum financial ratios or maintaining appropriate reserve levels, which may impact a PHA’s PHAS score and designation. HUD advises PHAs to analyze the impact of using this flexibility on their PHAS score prior to use.

For a PHA operating under a COCC or fee for service model, using this flexibility could result in less excess cash at the property, which could limit the PHA's ability to transfer funds from one project to another or charge an asset management fee. Once again, PHAs are advised to analyze the impact that this flexibility could have on their project's excess cash calculations before using.

The amount obligated to any PHA project will not change based on a PHA's decision to use operating subsidy for CFP activities. However, PHAs must follow the requirements related to drawing down such operating subsidy for CFP activities as outlined in Notice PIH 2018-03.

As with capital funds, budget revisions for operating subsidy to be used for CFP activities may be necessary from time to time.

Operating subsidy used for CFP activities carries a further restriction from operating subsidy used for operations, so from the time the PHA draws down these funds and before payment is made, the funds must be reported as restricted on the PHA's financial data schedule and financial statements.

Section 5 Federal Requirements Applicable to All Capital Fund Activities

24 CFR 905.308

The PHA must comply with the requirements of:

- 24 CFR Part 5 (General HUD Program Requirements; Waivers)
- 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) (to be covered more in Chapter 8)
- The requirements of this part.

The PHA must also comply with the following program requirements:

- **Nondiscrimination and equal opportunity**, including but not limited to, HUD's generally applicable nondiscrimination and equal opportunity requirements at 24 CFR 105 (a) [*Note: this is ADA*] and the Architectural Barriers Act of 1968 and its implementing regulations at 24 CFR parts 40 and 41. The PHA shall affirmatively further fair housing in its use of capital funds, which includes, but is not limited to, addressing modernization and development.
- **Environmental requirements**. All activities regarding the Capital Fund are subject to environmental review by a responsible entity under HUD's environmental regulations at 24 CFR part 58 and must comply with the requirements of the National Environmental Policy Act of 1969 and the related laws and authorities listed at 24 CFR part 58.5.

  HUD may make a finding in accordance with 24 CFR 58.11 and may perform the environmental review itself. In those cases, it will do so before approving a proposed project.

- **Wage rates:**
  - **Davis-Bacon wage rates.** For all work or contracts exceeding $2,000 in connection with development or modernization (except for nonroutine maintenance work (CFR 905.200 (b)(5) defined again below), all laborers and mechanics employed on the construction, alteration, or repair must be paid not less than the wages prevailing in the locality, as determined by the Department of Labor.

    Nonroutine maintenance work include work items that ordinarily would be performed on a regular basis in the course of maintenance of property, but have become substantial in scope because they have been postponed and involve expenditures that would otherwise materially distort the level trend of maintenance expenses. These activities also include the replacement of obsolete utility systems and dwelling equipment.
  - **HUD-determined wage rates**. For all operations work and contracts, including routine and nonroutine maintenance (as defined above), all laborers and mechanics employed must be paid not less than the wages prevailing in the locality, as determined or adopted by HUD.
  - **State wage rates**. Preemption of state prevailing wage rates.
  - **Volunteers**. The prevailing wage rate requirements do not apply to volunteers performing development, modernization, or nonroutine maintenance work.
  - **Technical wage rates**. All architects, technical engineers, draftsmen, and technicians (other than volunteers) employed in a development of modernization project must be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by HUD.

- **Lead-based paint poisoning prevention.** The PHA must comply with the Lead-Based Paint Poisoning Act, the Residential Lead-Based Paint Hazard Reduction Act, the Lead Safe Housing Rule and the Lead Disclosure Rule at 24 CFR part 35, and with the Dust-Lead Post Abatement Clearance Levels at 40 CFR Part 745.
- **Fire safety.** A PHA must comply with the requirements of section 31 of the Federal Fire Prevention and Control Act of 1974.
- **Flood insurance and flood plain requirements.** The PHA will not engage in the acquisition, construction, or improvement of a public housing project located in an area that has been identified by FEMA as having special flood hazards, unless:
  - The requirements of 24 CFR part 55, Floodplain Management, have been met, including a determination by a responsible entity under 24 CFR part 58 or by HUD under 24 CFR part 50 that there is no practicable alternative to locating in an area of special flood hazards and the minimization of unavoidable adverse impacts;
  - Flood insurance on the building is obtained in compliance with the Flood Disaster Protection Act of 1973; and
  - The community in which the area is situated in participating in the National Flood Insurance Program in accordance with 44 CFR parts 59 through 79, or less than one year has passed since FEMA notification regarding flood hazards.
- **Coastal barriers**. Under the Coastal Barriers Resources Act, no financial assistance under the Capital Fund may be made available within the Coastal Barrier Resource System.
- **Displacement, relocation, and real property acquisition**. All acquisition or rehabilitation activities carried out under the Capital Fund, including acquisition of any property for development, must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and implementing regulations at 24 CFR part 24.
- **Procurement and contract requirement**. PHAs and their contractors must comply with Section 3 of the Housing and Community Development Act of 1968 and HUD's implementing rules at 24 CFR Part 75 (see Chapter 8).

Section 6 Use of Operating Subsidy for Capital Fund Purposes

Notice PIH 2018-03, published February 28, 2018, provided new opportunity, authorized under the Housing Opportunity Through Modernization Act (HOTMA), for PHAs to use operating subsidies for capital activities.

1. Per HOTMA, PHAs may use up to 20 percent of their operating subsidies for CFP activities, beginning CY 2018
2. Operating subsidies to be used for CFP activities must remain in e-LOCCS

Not applicable to non-asset management PHAs of 250 or less units (who have full fungibility) and MTW PHAs

HUD will publish the maximum amount of operating subsidy allowable for CFP towards the end of each funding year

Six-step process:

1. Must be in PHA plan.
   - Qualified PHAs (exempt from annual plan), publicize intent at public hearing
2. PHA will estimate, per project and PHA-wide, amount of operating subsidy to be used for CFP.
   - Must not exceed 20 percent PHA-wide
   - At any project, must not exceed that project's total op sub
3. Towards the end of each funding year, HUD will publish total amount of operating subsidy obligated to each PHA and identify the maximum amount operating subsidy (i.e., 20 percent) allowed for CFP.
4. After HUD publishes (Step 3), PHA may need to update original estimate of operating subsidy to be used for CFP activities and will be required to create a draft Annual Statement/Budget (or multiple ones) identifying the amount of operating subsidy to be used for CFP for each project.
   - In EPIC

5. Once the budget is in EPIC, HUD will review.
   - If draft Annual Statement/Budget complies, HUD will create a notional operating subsidy grant in EPIC
   - PHA then submits the budget
   - HUD will transfer operating subsidy in the submitted budget from BLI 1000 to BLI 1300
6. Once funds are transferred to BLI 1300, PHAs must adhere to CFP requirements related to drawdown and expenditure as detailed in 24 CFR 905.310
   - PHAs may not spend op sub for CFP drawn from BLI 1000
   - PHAs that determine that they need to transfer back all or a portion of the previously transferred operating subsidy from BLI 1300 back to BLI 1000 to be used for operating activities may do so after creating a revised budget in EPIC
   - HUD will work with the PHA to make the necessary adjustments to EPIC and LOCCS

Learning Activity 2-1: Eligible and Ineligible Costs and Activities

- Indicate if the listed cost/activity is eligible or ineligible under the Capital Fund.
  - Check the appropriate box. **E=Eligible, I=Ineligible**

E	I	
		Paying local law enforcement for two police officers to patrol public housing sites
		Design and physical improvement costs to correct violations of local building code
		Training for staff
		Obtaining HUD approval to take unit offline and renovate as a child care center
		Ongoing security guards for an elderly/disabled site in a high-crime area
		Ongoing maintenance of security cameras
		Hiring an economic self-sufficiency coordinator
		Hiring a coordinator for elderly and disabled populations
		Acquisition of property with no rehab needed
		Replacing cracked stairwells. Replacing stairwells is not in the CFP 5-year action plan.
		Paying for technical assistance for integrated utility management and capital planning
		Changing a common utility meter to individualized meters in an elderly/disabled site
		Transferring funds to the Housing Choice Voucher program
		Installation of security cameras
		Implementing water conservation measures and ongoing maintenance of systems
		Ongoing training for security guards
		Down payment assistance for a homeownership program
		Demolition and reconfiguration
		Installing all new carpets in a project if not in the CFP action plan.
		Vacant unit turnaround make-readies when vacancies are high
		Capital Fund Program Fees of up to 10% paid to the COCC
		Improvements to management, financial, and accounting control systems

Section 7 Emergencies and Natural Disasters

GENERAL

24 CFR 905.204

PHAs are required by the CF ACC to carry various types of insurance to protect it from loss.

In most cases, insurance coverage will be the primary source of funding to pay repair or replacement costs associated with emergencies and natural disasters.

When HUD's Annual Appropriations Act establishes a set-aside from the Capital Fund appropriation for emergencies and natural disasters, the procedures in this section apply.

EMERGENCIES AND NATURAL DISASTER DEFINITIONS AND REQUIREMENTS

An emergency is an unforeseen or unpreventable event or occurrence that poses an immediate threat to the health and safety of the residents that must be corrected within one year of funding.

A natural disaster, for purposes of the emergency grant from the Capital Fund reserve, is a non-presidentially declared disaster.

In the event an emergency or natural disaster arises, HUD may require a PHA to use any other source that may legally be available, including unobligated capital funds, prior to providing emergency or natural disaster funds from the set-aside.

HUD will review, on a case-by-case basis, requests for emergency and natural disaster funding from PHAs.

PROCEDURE TO REQUEST EMERGENCY OR NATURAL DISASTER FUNDS

A PHA must submit a written request in the form required by HUD.

In a natural disaster where the PHA requires immediate relief to preserve the property and safety of the residents, the PHA may submit a preliminary request.

- The PHA is then required to complete and submit the remaining information at a time required by HUD.

For emergency requests, PHAs follow the procedures outlined below.

PROCEDURE TO REQUEST PRELIMINARY NATURAL DISASTER GRANT FOR IMMEDIATE PRESERVATION

A PHA may request a preliminary grant only for costs necessary for immediate preservation of the property and safety of residents.

The application should include the reasonable identification of damage and preservation costs determined by the PHA.

An independent assessment will be required when the PHA submits the final request or when the PHA reconciles the preliminary application grant with the actual amounts received by FEMA, insurance carriers, and other natural disaster relief sources.

Regardless of whether further funding from the set-aside is requested, at a time specified by HUD, the PHA will be expected to provide a reconciliation of all funds received, to ensure that the PHA does not receive duplicate funding.

PROCEDURE FOR AN EMERGENCY OR A FINAL REQUEST FOR NATURAL DISASTER FUNDS

In the request, the PHA must:

- Identify the public housing project(s) with the emergency or natural disaster condition(s).
- Identify and provide the date of the conditions that present an unforeseen or unpreventable threat to the health, life, or safety of residents, in the case of emergency or natural disaster (e.g., hurricane, tornado, etc.).
- Describe the activities that will be undertaken to correct the emergency or the conditions caused by the natural disaster and the estimated cost.
- Provide an independent assessment of the extent of and the cost to correct the condition.
  - The assessment must be specific.
- Provide a copy of a currently effective DOT covering the property and an opinion of counsel that there are no preexisting liens or other encumbrances on the property.
- Demonstrate that without the requested funds from the set-aside, the PHA does not have adequate funds available to correct the emergency condition(s).
- Identify all sources of available funds (such as insurance proceeds, FEMA).
- Any other material required by HUD.

Emergency grants can be used for the cost of relocating residents.

- 8 percent of an emergency grant can be budgeted for contingency purposes
- 2 percent of an emergency grant can be used for administration

HUD ACTION

HUD will review all requests. If HUD determines that a PHA's request meets requirements, HUD will approve the request subject to the availability of funds in the set-aside, in the order in which request are received and determined approvable.

SUBMISSION OF THE CAPITAL FUND ACC

Upon being provided with a CF ACC Amendment from HUD, the PHA must sign and date the document and return it to HUD by the date established by HUD.

HUD will execute the signed and dated CF ACC Amendment.

Learning Activity 2-2: Scenario

You have just been hired as the Capital Fund manager at the Hillside City PHA. The PHA has four AMPs, described below:

	Oakdale		The Vines		Hilldale Village		Blossom Lane	
Occupancy Type	Family		Elderly/Disabled		Elderly/Disabled		Family	
Built date	1978		1984		1978		1981	
ACC Units	150		205		198		224	
Date of Last Major Rehab	2012		---		2009		2013	
Bedroom Mix	0 BR		0 BR	50	0 BR		0 BR	
	1 BR	10	1 BR	149	1 BR	140	1 BR	
	2 BR	95	2 BR	6	2 BR	58	2 BR	50
	3 BR	40	3 BR		3 BR		3 BR	120
	4 BR	5	4 BR		4 BR		4 BR	54
Average Bedroom Size	2.3		.9		1.3		3.0	
Average Occupancy Rate	97%		89%		99%		98%	
Average Turnover	15		22		5		12	

Some additional information: Oakdale and The Vines are three blocks from each other, whereas Hilldale and Blossom Lane are across town (about three miles), and a mile from each other.

1. Based on only the above information, what are your concerns and what facts would you gather?

At the public hearing, the Resident Advisory Board and residents who attended made the following requests and recommendations:

- Residents at Oakdale want new refrigerators. Most of the refrigerators at Oakdale are five years old. They also request new countertops in the kitchens and that cabinets be refinished or replaced. Residents also want a new playground and more washer/dryers in the laundry rooms.
- Residents at Hilldale want more energy-efficient AC units (the AC units are about four years old). They also want a security gate to the parking lot, a walking path around the property, new carpet (the carpet is about three years old), and walk-in closets. Residents want more activities and events.
- The transfer list at The Vines to 1-BR and 2-BR units from efficiencies is long. Many residents have requested a 2-BR unit because of the addition of a live-in aide. There are only six 2-BR units at The Vines. Also, more residents need wheelchair accessibility. There are currently six completely accessible units and no turnover is expected. The residents also want new energy efficient AC because many residents have breathing problems. The kitchen in the community room is very small and outdated, so the residents request that the kitchen be enlarged and updated. Residents also stated that there were not enough events and activities. Residents also stated that the supermarket two blocks away had recently closed; residents want the PHA to offer a food delivery service.
- Residents at Blossom Lane want a child care center onsite. Many families are working and the nearest Head Start is two miles away. Residents also request larger closets. Porches, washer/dryer hookups, and covered parking were also requested.

2. How would you prioritize the above requests?

3. Are there issues that, while not a CFP activity, should be looked into?

Section 8 Chapter 2 Post-Test

1. A PHA with 250 or more public housing units may use what percent of its annual Capital Fund grant for activities eligible under the Operating Fund?
   a. 10 percent
   b. 10 percent, phased down from 20 percent over a 5-year period
   c. Up to PHA policy
   d. 20 percent
   e. 100 percent

2. A PHA with fewer than 250 public housing units may use what percent of its annual Capital Fund grant for activities eligible under the Operating Fund?
   a. 10 percent
   b. 10 percent, phased down from 20 percent over a 5-year period
   c. Up to PHA policy
   d. 20 percent
   e. 100 percent

3. As in question #2 above, a PHA with fewer than 250 public housing units may use the indicated percent of its annual Capital Fund grant for activities eligible under the Operating Fund, unless:
   a. The PHA has reserves exceeding six months of operating expenses
   b. The PHA is designated as troubled
   c. The PHA is a MTW agency

4. In order to utilize the maximum percentage of its Capital Funds for operating funds, a PHA with fewer than 250 public housing units, not troubled under PHAS, must also have determined that:
   a. There are no debt service payments
   b. There are no significant Capital Fund needs
   c. There are no emergency needs that must be met
   d. All of the above

5. Routine vacant unit turnaround is eligible as a vacancy reduction expense under the Capital Fund.
   a. True
   b. False

6. A stairway that serves second floor dwelling units has become unstable. It is not in the PHA's annual plan. Is repair of this stairway an eligible expense, and why or why not?
   a. Yes; you can always add work items
   b. Yes; it is an emergency, and does not need to be included in the plan
   c. No; it should be an ongoing maintenance repair
   d. No; it is not an emergency if there is a second means of escaping from a fire

7. In order for expenses to be eligible under Management Improvements, the PHA must be able to demonstrate the linkage between the management improvement and the correction of an identified management deficiency.
   a. True
   b. False

8. Is the installation of air conditioning at family developments Capital Fund-eligible?
   a. Yes
   b. Yes, but only in hot-climate zones
   c. No

9. Your PHA would like to serve food to encourage resident participation at the annual Capital Fund meeting. Is this an eligible Capital Fund expense?
   a. Yes
   b. No
   c. Only if you are invited

10. Under the final rule, the ability of a PHA with fewer than 250 public housing units, not troubled under PHAS, to use the maximum percent of its Capital Funds for operating funds will now be automatically approved by the HUD field office.
    a. True
    b. False

11. Training for PHA personnel in operations and procedures is an eligible expense under Management Improvements.
    a. True
    b. False

12. Improvements to management, financial, and accounting control systems of the PHA are eligible expenses under Management Improvements.
    a. True
    b. False

13. Any salaries and benefits, other than the Capital Fund Program Fee, must be:
    a. Related to a specific public housing development
    b. Related to a modernization project
    c. Detailed in the CFP 5-Year Action Plan
    d. All of the above

14. The replacement of obsolete utility systems and dwelling equipment are eligible expenses under the Capital Fund.
    a. True
    b. False

15. The Capital Fund Program Fee:
    a. Is based on occupied units and HUD-allowed vacancies, measured by occupancy rate under PHAS
    b. Is one of several conventional fees paid to the Central Office Cost Center (COCC) when a PHA has converted to project-based and asset management
    c. Is designed to cover 100 percent of centralized modernization and procurement staff's salaries and benefits
    d. Is limited to 50 percent of the annual Capital Grant

16. Eligible expenses under the Capital Fund include design and physical improvement costs associated with:
    a. Correcting violations of local building code
    b. Correcting violations of the Uniform Physical Condition Standards (UPCS) under PHAS
    c. A national building code
    d. All of the above

17. Your PHA would like to expand the kitchen at Cedar Grove, your elderly/disabled project, in order to provide more extensive nutritional and meal services offered by community supportive services. Is expanding the kitchen an eligible expense?
    a. Yes
    b. No

18. A proposed demolition or disposition is not necessarily considered a significant amendment to the Capital Fund Action Plan.
    a. True
    b. False

19. Capital Fund-related activities identified as emergency work are an eligible expense under the Capital Fund, but only if the need is indicated in the CFP 5-Year Action Plan.
    a. True
    b. False

20. Eligible expenses under the CF include amenities, materials and design that are:
    a. Modest in design and cost
    b. What the majority of residents want per public comment
    c. Customary in the locality
    d. Competitive with the higher-income housing in the locality
    e. All of the above
    f. Both a and c

21. The Capital Fund may be fungible to assist the PHA's housing choice voucher program, but only if in the CFP Action Plan, approved by the PHA's Board and HUD.
    a. True
    b. False

22. The PHA would like to replace the carpet in a few units at their Elm Street development. Can Capital Funds be used to pay for new carpet?
    a. Yes, funds can be used for any eligible purpose
    b. No, carpet is routine maintenance

CHAPTER 3 Capital Fund Planning Fundamentals and Submission Requirements

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize the steps and process in any strategic planning effort;
- Identify the steps necessary for effective Capital Fund program planning.
- Understand the requirements for annual electronic submission for the Capital Fund program

Section 1 Planning for the Capital Fund Program

ELEMENTS OF PLANNING

There are basic steps to be followed in order to effectively complete planning for the Capital Fund.

The seven steps of effective planning of the Capital Fund resource are:

1. Analyze current situation
2. Develop assumptions about potential problems
3. Set objectives
4. Develop alternatives
5. Decide on a solution
6. Develop and carry out a plan to implement your solution
7. Set up procedures to monitor and control your plan.

ANALYZE CURRENT SITUATION

What is the current condition of each of the agency's properties? Has a good, detailed physical needs assessment or similar inspection been completed? For example:

- The PNA was completed two years ago and indicated that roofs on four of the public housing sites needed repairs.
- Because of poor tracking, several master keys to the units have been lost or misplaced. The potential security risk is apparent, but re-keying all the properties will cost about $25,000.
- The executive director wants the maintenance department to begin to increase the number of preventive maintenance inspections to two per unit, per year and to use the information gathered from those inspections to determine potential trends for future capital needs.
- For the last six months, maintenance has had an increasing number of calls about various electrical problems in two 75-unit apartment buildings. Major electrical work may be needed in those buildings within the next six months. To handle the problems, two maintenance technicians were taken off the preventive maintenance (PM) staff and assigned to electrical jobs.

Your analysis should consider all of these points as you begin to develop your 5-Year Action or annual CFP plan.

DEVELOP ASSUMPTIONS

What is the worst situation that could happen? Does maintenance have any control over the situation?

Probably the worst situation would be to have one or more units entered with lost master keys and residents' harmed or their belongings stolen. Unless the missing keys are found or returned, the Maintenance Department really has no control.

While the roofing on four sites needed repair two years ago, it may be that some or all of those roofs now need to be replaced. Or, is it clear that the electrical problems in the two 75-unit buildings will need to be addressed very soon?

Using preventive maintenance inspections as a way to identify trending problems is an excellent idea. Currently, the department conducts one preventive maintenance inspection each year. Is additional staff needed to conduct two PM inspections each year? If so, how many? If funds are not available for additional staff, what tasks can be eliminated or streamlined to free up staff time for the additional inspections?

These types of issues would need to be considered when developing capital plans.

SET OBJECTIVES

What does the agency want to achieve? How long will it take to reach the objective?

Realistic objectives are critical to effective planning. The first step is to analyze the current situation, then identify possible problems that could impact the capital plan. Next it is time to decide which needs are priorities and develop a capital plan work program to address the highest priority items.

When developing objectives, ask the following questions:

1. What should be accomplished?
2. The security and electrical issues appear to be priority items so these two projects should be included in the annual plan and addressed using available Capital Funds. What is not happening now that should happen after the capital plan is implemented?
    - For example, currently maintenance is only getting done through resident initiated work orders and maintenance during vacancy turnaround. Maintenance should be performed regularly to eliminate severe maintenance problems or breakdowns from developing, like the electrical problems in the two 75 unit apartment buildings noted above.
    - Better preventive maintenance may have extended the life of the roofs that are deteriorating.
    - A better tracking and control system for master keys needs to be established and implemented to ensure this issue does not occur again.

3. What will have to happen in order to achieve these objectives?
   - First, the high priority items will have to be included in the annual CFP plan and the work completed. Then additional focus can be given to determining how additional preventive maintenance inspections can be performed. That will require adequate staff, time, and equipment, but may well result in overall better maintenance efficiency and operation.
4. How will the objective be accomplished? What will have to change or improve?

DEVELOP ALTERNATIVES

- Because the re-keying project and electrical work can be completed using CFP funds, alternatives need to be explored for the lower priority objectives - additional PM inspections and a better control system on master keys.
- Since preventive maintenance, over a period of time, generally reduces resident initiated work orders and decreases the time it takes to do unit turnaround, focus on the objective to reduce resident work orders and improve unit turnaround time.
- For example, for one of the two annual PM inspections, a PM person could accompany property managers during their annual inspections. The second PM inspection could then be performed while a maintenance technician is responding to a routine work order, also completing a PM inspection form during their visit to the unit. Do you see any problems with this?

How well must the activity be done? Set standards for what is to be accomplished.

For example, the minimum standard should be one PM visit per year per unit with the goal of two PM inspections when the needed staff is available through work reassignment, streamlining of duties, etc. How long will it take to complete the objective satisfactorily?

- As an example, establish a schedule that ensures at least one PM inspection will be performed annually. After the first full year, compare the number of emergency work orders received against the number received in the year prior to the new PM program. The goal should be to implement two PM inspections per unit in the second year. Then, following the second year, there will be adequate information to determine if the PM program is achieving the objective of reducing emergency work orders and improving unit turnaround times.

There are several reasons that can cause a plan to fail, and several of them are preventable.

- Poor objectives can result in poorly developed plans that have little chance of success.
- If inaccurate information is used when planning, the plan will likely fail.
- If objectives are not reviewed and measured there is no way to know if the objective is being achieved. Reviewing on a regular basis provides the opportunity to adjust the plan in order to increase the chance of success.
- Uncontrollable circumstances can cause even the best plans to fail, e.g., a hiring freeze at the PHA.

Methods of Developing Alternatives

One way to develop alternatives is to think of ideas as individuals. This can be effective when there is limited time to plan. The drawback is that the alternatives come only from one person's point of view.

Another method is to “brainstorm.” This is one of the most effective methods because it is done in groups. All group members share their ideas; sometimes ideas generate other ideas, and by the end, the most creative solutions are identified.

- The biggest advantage of “brainstorming” is that many solutions are generated.

- The biggest disadvantage is "group think." This happens when the group members are not comfortable expressing their ideas. This makes it difficult for the group to decide on the best solution(s).
- "Brainstorming" is most effective when there is a leader, sometimes called a "facilitator," who keeps the group focused on the problem and encourages participation from everyone attending the session.

Decide on Alternatives

Instead of randomly picking a solution, analyze each alternative, weighing the pros and cons. Ask the following questions about each alternative:

- Can this solution be implemented under current policy and procedures?
  - If the answer is no, that does not necessarily mean the idea should be abandoned. If it is a worthy alternative, pursue it with the proper administrator(s).
- Does the PHA have the resources to implement this solution?
  - If not, does the authority have the funding to obtain the resources?
  - If yes, is the authority willing to spend the funding on such resources?
- How will this solution affect other PHA departments? For example:
  - Every problem and solution may affect every other department in the agency. This can be in the form of additional staff to be hired and trained, additional materials or contracts procured or solicited, and new vendors to be established in the accounting system.

The overall purpose of deciding on an alternative is to:

- Select a solution
- Commit to a course of action
- Finalize the decision

DEVELOP AND CARRY OUT THE PLAN

Developing the Plan

This involves breaking the selected solution(s) down into individual tasks to be accomplished.

Are there other ways to conduct two PM inspections per unit, per year?

What kind of tasks could be reviewed for potential elimination or streamlining in a maintenance department to free up staff time?

Prioritizing the Tasks

Prioritizing is very important. You must determine what tasks should be done first, second, third, and so on. Look at the task list and rank the tasks - number one being the highest priority, number two the second, and so on.

There are two ways to prioritize; by importance and sequence.

Prioritizing by importance is simply making a decision of what is critical and what can wait.

- Emergency maintenance is a perfect example. If Mrs. Jones calls in an emergency work order because her furnace is not working and it is 20 degrees outside, that situation is more important than conducting a PM inspection with the property manager in Mrs. Smith's kitchen.
- Prioritizing tasks for planning purposes is done the same way. For example:
  - The PHA is in Florida. The fall rainy season is two months away, and two of the apartment units need new roofs; otherwise, the roofs will leak under heavy storms
  - Also, there are modernization efforts getting ready to start, which entail replacing every unit's front door. The door replacement work is scheduled to start in a month and finish three months later.
  - What is more important to do first?

Prioritizing by sequence is the second way to assign priority to tasks. Sequence comes into play when tasks are dependent on one another, either before or after. For example:

- The PHA needs to replace some power lines, which will result in no power for three days. The staff must first set up an alternate power source for those residents affected
- If you do not prioritize by importance and/or by sequence, efforts will be disorganized, the staff and residents will be frustrated, and the plan will not be successful.

Carrying Out the Plan

Once the details are established and prioritized, it is time to implement the plan. Decisions must be made as to when and how it will be done, and then communicated to those involved.

Establish Procedures to Monitor and Control the Plan

Too often people start something and do not follow through. The same is true with implementing a plan. A plan should not be implemented and then ignored. As part of the planning process, measurements and expected performance outcomes should be set up so the plan can be supervised and evaluated to determine if it is working.

Long-range Planning

Long range planning considers the PHA's future plans, generally one to five years. Specifically, long range planning tries to analyze, predict, and solve problems that may happen in the distant future. When planning for the future, think of the maintenance department as a stand-alone business. The communities and residents are the customers. The goal is to improve and/or keep up these properties and provide safe, affordable housing for the residents.

Principles of Long-range Planning

All planning is the continuous process of preparing for the future.

To help develop a long range plan, consider these questions:

- What business are we in?
  - Are we in the maintenance business, or the customer service business, or both?
- What business would we like to be in?
  - Are there any other services we, as the maintenance department, can offer to our customers?
- What business should we be in?
  - Should we be involved with any of the social services programs, since our staff is in the housing units most frequently?
  - Would that type of involvement benefit our department?
- If we do not change our business in any way, where will we be in five years?
  - Violence on housing sites can be a problem for maintenance workers. If we take no action to protect the maintenance staff, what will happen to the problem?
- Where would we like our business, the maintenance department, to be in five years?
  - What do we want our business to have accomplished at the end of five years?

Examples That Require Long-range Planning

Modernization

Because modernization is expensive, it must be planned and funded over a period of years. The staff can play a big role in long term modernization planning.

The fact that the maintenance staff is around the communities and in the units on a daily basis provides the opportunity to identify maintenance-related problems that may actually require modernization work.

Preventive Maintenance

Preventive maintenance can require planning one to two years in the future depending on how many preventive maintenance inspections are planned per year and the size of the PHA housing portfolio. Most importantly, having adequate personnel, capital equipment, and funding for a program requires that preventive maintenance is planned along with other long range planning such as budget or hiring.

Reduction of Violent and Drug-Related Criminal Activity

The problems of violence and vandalism are common issues. Planning to decrease these types of problems is becoming more important every day. Because the maintenance staff is, by nature of their work, in the community, they talk to the residents, and observe firsthand what is causing the problems. Staff observations and ideas are very valuable when setting up and implementing a long range plan to decrease or eliminate this kind of problem.

MIDRANGE PLANNING

When you start dealing with shorter time frames, for example six months to a year, there is a greater need to coordinate the long-range objectives with mid- and short-range activities or plans.

Implementing all plans at once, may result in too much work for existing personnel. A lack of resources (equipment and maintenance personnel) can mean a frustrated staff, and angry residents.

The easiest way to coordinate plans is to take all plans and note where there are similar tasks. Then determine if there are any opportunities to combine tasks from the different plans to allow for a more efficient use of time and effort. Also, looking at all plans together provides the BIG picture of what is supposed to happen and when.

Taking the time to check will save time and headaches in the long run. For example:

- You develop a plan to use one team of three members (electrician, plumber, carpenter) to conduct preventive maintenance on all units twice a year
- In reviewing your unit turnaround plan you see that the number of unit turnarounds expected during the year will result in a two day increase in turnaround time by expanding the preventive maintenance schedule.
- Now you need to adjust the long range plan (hire a new maintenance person) or, if financial resources are not available, adjust the midrange plan to conduct preventive maintenance inspections once each year per unit, until the time when additional resources are available.

Coordination with Management

Part of planning is coordinating with property management. For example:

- You may plan to conduct unit turnarounds in five days, when the PHA management has established a standard of three days
- Coordination with management is necessary to ensure the standard for turnarounds can be met, given your resources and other maintenance plans.

Other examples of coordination are included in management plans such as budget, modernization, and contracts. For example:

- Maintenance technical knowledge is important in management decision making.
- Historical maintenance data from work orders can accurately prioritize modernization requirements and plans.
- Sharing knowledge of the quality of contractor work prior to the PHA's deciding whom to award a contract to will result in higher work satisfaction.
- Technical knowledge can also help in evaluating contractor bids to ensure that quality work can be done at the price quoted.

Examples of Midrange Planning

- Budgeting
- Personnel decisions
- Procurement
- Seasonal maintenance
- Workforce allocation
- Resource allocation
- Preventive maintenance
- Annual or management inspections
- Procurement
- Staff/Personnel
- Fleet maintenance

Short Range Planning

Short range planning involves anywhere from one day up to six months. Specifically, short range planning is taking routine operating procedures and distributing your staff in a way that ensures all work is done.

Efficient Resource Utilization

- Allocate inventory
- Determine equipment availability
- Determine staff assignments

Handling Emergency/Unanticipated Maintenance

No one ever plans an emergency; however, you can always be prepared. In the maintenance department, emergency and unanticipated maintenance are very common and can impede your daily or weekly planning.

Analyzing the situation quickly and coordinating it with the other priorities requires the use of problem solving skills.

Section 2 Preventive Maintenance

The preventive maintenance plan is an inherent component in long term planning. Preventive maintenance needs to inform your Capital Plan. Following is a template for a preventive maintenance plan that should be customized project by project.

- The example template on the following pages is for "PM Scheduled Maintenance" of systems at a private rental property.
- A PM schedule for units should also be developed. All units should have a PM work order at least annually.

Preventive Maintenance Guide

Item	Description	Frequency
Lighting	Street, parking, breezeway, signage, building, walkways	**Weekly**
HVAC Filters	Replace filters and add algecide tablets to **one twelfth** of the property weekly. Notify the units to be done next week.	**4 Times/Year**
Evaporator Coils	Coils are inspected during the **second quarter (April, May, June)** air filter change. List coils for cleaning on a separate service request.	**Yearly**
Smoke Detectors	Test according to the local ordinance, otherwise annually. Any defective devices are to be replaced immediately.	**Yearly**
Plumbing, Interior	Inspect all kitchen and bath faucets and toilets for leaks. Inspect all supply lines and washing machine hoses. List all repairs on service requests and schedule. Plumbing inspections and repairs are to be done during the **first Quarter (January, February, March)** air filter change.	**Yearly**
Drains, Storm	Inspect and clear all property, storm, yard, compactor, courtyard and/or downspout drains.	**4 Times/Year**
Furnace	Inspect electrical and/or gas connections. Inspect and clean heat exchangers. Inspect burners and pilot flame. To be done in conjunction with **Electrical** inspection/ service in **third quarter (August, Sept, Oct)** filter change.	**Yearly**
Asphalt, Speed Bumps	Inspect & repair all streets, parking areas, entrances. Paint all speed bumps.	**3 Times/Year**
Curbing & Tire Stops	Inspect & repair all curbing. Replace all broken or missing stops. Repaint any previously painted curbing.	**3 Times/Year**
Sidewalks & Concrete Steps	Inspect all sidewalks & concrete steps. Mark and measure for possible capital, if necessary.	**4 Times/Year**
Electrical	Inspect breaker box. Tighten all breakers and main lugs. Inspect stove and dryer receptacles, bath exhaust fans, Wall receptacles, etc. To be done in conjunction with **Furnace** service and the **third quarter (August, Sept, Oct)** air filter change.	**Yearly**
Fitness Equipment	Inspect and repair.	**4 Times/Year**
Playground Equipment	Inspect all swings, slides, monkey bars, and ground surface for repair.	**6 Times/Year**
Tennis & Basketball Courts	Inspect and repair fencing, gates, wind screens, nets, backboards and posts.	**6 Times/Year**
Condensation Drains	Clear all condensation drains through water or air pressure through vacuuming lines. To be done in conjunction with the **HVAC Condenser Unit Service**.	**Yearly**
Signage	Inspect for paint and plumb. Inspect for lighting.	**Monthly**
Office, Clubhouse,	Inspect paint, carpet, lighting, appliances, equipment, HVAC filters, venting, plumbing, roofing, guttering, windows, screens, alarm systems, restrooms, and all other contents and structures.	**Monthly**
Boiler Systems	Flush tanks, inspect electrical, gas fittings, venting, burners,	**6 Times/Year**
Circulation Pumps	thermo-couples, temperature settings, thermostats, and timers. Oil motors. Include company-owned laundry and clubhouse equipment.	
Compactor, Dumpsters	Inspect steps, stairs, handrails, ramps. Inspect paint, equipment, switches, drains, concrete and enclosures.	**Monthly**
Pools, Spas, Saunas	Use Inspection Form provided by the local authority responsible for public pool safety. Replace motor/pump seals yearly. Plumbing, filters, heaters, chlorinators, lighting, timers, motors and pumps are to be properly serviced. All recording forms must be current and chemicals properly stored.	**Seasonally**

Golf Carts, Trucks	Inspect brakes, batteries, windows, fuel system, seats and tires, clean thoroughly and detail. Perform all factory advised servicing. Repair or replace as necessary.	**6 Times/Year**
Fire Alarms, Sprinkler	Inspect pull stations, alarms, relay stations, pump systems, and other equipment according to local ordinance.	**6 Times/Year**
Gutters, Roofs, Downspouts	Inspect guttering, flashing, shingles, fireplaces and caps, downspouts and splash blocks. Clean all gutters and roofs.	**2 Times/Year**
Irrigation Systems	Test all zones, valve boxes, timers, heads and clocks. Inspect and service motors and pumps. Repair as needed.	**Yearly**
Fencing &Gates	Inspect and repair all property fencing, including patios, pools and tennis courts. Inspect all gates and repair as needed. Repaint previously painted gates and fencing as needed.	**6 Times/Year**
Fountains & Lakes	Inspect pumps and lighting. Check for algae.	**Monthly**
Stairs & Balconies	Inspect all treads, handrails, pickets and support structures.	**4 Times/Year**
Windows & Doors	Inspect or replace all screens. Record fogged windows and doors for capital.	
HVAC Condenser Units	Inspect and clean units. Replace service port caps. Oil motors. Spray contactor. Inspect disconnect box. Inspect electrical. To be done in conjunction with **Condensation Drain Service**.	**Yearly**

Section 3 Security

PHAs should develop their drug and crime prevention strategies, including their Capital Fund planning, in conjunction with local law enforcement officials.

SECURITY: DAY-TO-DAY PROPERTY MANAGEMENT

A principle in good property management and security is that the maintenance team, Capital Fund team, local law enforcement, residents, and property managers need to work well together and communicate often.

Learning Activity 3-1: Security

Put a checkmark next to the components that your PHA is doing to enhance security.

	Inspect units, buildings, and grounds on a regular basis.
	Test active security devices and equipment regularly.
	Observe and interact with security personnel in the performance of their duties.
	Include the discussion of security issues in meetings with residents to solicit comments, and to reinforce their involvement.
	Inform and emphasize to residents the lease provisions which pertain to unauthorized visitors, drug and criminal activities, and responsibility for behavior of guests while on the premises.
	Enforce the lease and eviction policy.
	Property managers, maintenance staff, and the modernization team recommend physical security enhancements.
	Report any apparent deficiencies in security measures immediately to the appropriate entity, and follow up to assure that corrective actions have been taken.
	Prevent victimization by educating women, the elderly, and parents.
	Offer and promote legitimate activities at the property that are visible and inviting.
	Safeguard PHA equipment so it isn't a target for crime.
	Target key places of crime-the majority of crime is committed at just 10 percent of the places available.

Are there some of the measures noted above that you should implement at your housing agency?

SECURITY: CAPITAL IMPROVEMENTS

Depending on the agency's Capital Fund allocation, consider the following in your Capital Fund planning:

SECURITY FENCING

Security fences have two purposes: they help to keep unwanted persons out of a site in general, and they contain criminals when they run from police.

When uninvited persons are arrested for trespassing, the police may occasionally find illegal drugs or weapons on them, which helps keep them in jail longer and discourages them from returning to our sites once they are out of jail.

Fences create a clearly defined common area, semi-private space, and private space for residents.

LANDSCAPING

Bushes around windows and doorways should be well trimmed and not impair the view of entrances and windows.

Plants can be used as barriers to ground floor apartment windows (such as pyracantha planted under windows trimmed to just below the window sill, etc.). *Note*: Check with your field office before planting anything close to buildings. Some field offices and UPCS inspectors deduct points for plantings that are too close to the buildings, even if used for security purposes.

CLEARLY-POSTED ADDRESSES

Large, clearly visible address numbers make it easier for first responders such as police, fire trucks, and ambulances to locate individual units or buildings.

If the complex consists of several buildings, each building should be identified on at least two sides with large building numbers clearly visible to adjacent parking areas both day and night.

Doors and Locks

Every apartment should have a solid-core entrance door with case-hardened steel single cylinder deadbolt locks, one-inch throw bolts, and corresponding security strike plates.

These doors should be equipped with 180 degree peepholes. Some PHAs or state codes do not allow single cylinder deadbolt locks because of the possibility of children being unable to get out of the unit in case of a fire or other emergency.

Windows

All windows should have window locks that operate properly. “Charlie Bar” or other commercial locking devices can be used for sliding doors.

Something as simple as a stick or cut-off broom stick, or screw-on clip window lock, can be used to allow a window to be fully locked more securely or to allow a window to be partially open without creating a security issue.

Security for Common Areas

Laundry rooms and storage areas should be locked. Doors which are otherwise locked are not propped open. There is control over who enters and leaves the building.

Graffiti

Gangs use graffiti to claim their territory, challenge other gangs, and intimidate a neighborhood. Taken alone, graffiti may not appear to be significant, but when coupled with other indicators of criminal activity, it is a warning sign.

Graffiti should always be removed as quickly as possible. This will discourage individuals from future graffiti activity because graffiti is not as effective if it is not on view for a long period of time. It is like advertising, it needs to be viewed often for it to be the most effective.

Reconfiguration of Common Areas

Common areas at some target sites are conducive to drug-related crime as a result of the existing layout and/or the traffic pattern (both foot traffic and vehicle traffic).

Modifications may include the reconfiguration of parking lots and common areas, the installation of "visitor only" parking areas to reduce the presence of uninvited persons from congregating at the site and reduce drug-related crime and the installation of speed bumps at several sites to reduce the speed and frequency of traffic by nonresidents.

Activity Support

Legitimate recreational and social activities in community rooms and self-sufficiency units attract responsible tenants and discourage crime.

Section 4 Submission Requirements

CAPITAL FUND PROGRAM ANNUAL SUBMISSION.

Each year, beginning in FFY 2018 a PHA must make an electronic Capital Fund submission, as further described in this chapter, in order to receive Capital Fund grants. The key element of the Capital Fund submission is the 5-Year Action Plan, which describes the PHA's 5-year plans for Capital Fund activities, and includes a budget for each year in the 5-Year Action Plan.

- PHAs with FYE March 31, 2017 and June 30, 2017 are required to submit their Capital Fund Plans and Budgets electronically in FFY 2017.

DECOUPLING FROM PHA PLAN

Prior to the CFP final rule, Capital Fund budgets were part of the notice and approval process for the PHA Plan, including the 5-Year Plan and Annual Plan. The CFP final rule "decoupled" the Capital Fund budgets from the PHA Plan and now requires the Capital Fund budgets to be submitted along with the annual CFP ACC Amendment and supporting documents.

As a result of the decoupling, there is no distinction between qualified and nonqualified PHAs under the Capital Fund Program. All PHAs have the same annual submission requirements.

PUBLIC HEARING

The public hearing and comment period are key elements in informing a PHA's residents and the wider community of the PHA's goals and its strategy for addressing capital needs.

All PHAs must conduct a public hearing and consult with the PHA's RAB to discuss the Capital Fund submission or any significant amendment. The hearing must be conducted at a location that is convenient to the residents.

The PHA may elect to conduct a separate annual public hearing in order to get public comments, or to hold the public hearing at the same time as the hearing for the Annual PHA Plan, the 5-Year Plan, or the required annual hearing for qualified PHAs.

Not later than 45 days before the public hearing takes place, the PHA must:

- Make the Capital Fund submission, along with the other required materials listed, available to the residents and the Resident Advisory Board (RAB)
- Publish a notice informing the public that the information is available for review and inspection, stating the date, time, and location of the public hearing
- Conduct reasonable outreach activities to encourage broad public participation in the review of the Capital Fund submission

Public and RAB Comments

The PHA must consider the comments from the residents, the public and the RAB on the CF submission, or any significant modification to the five year or annual plans.

In submitting the final CFP 5-Year Action Plan to HUD for approval, the PHA must include a copy of the recommendations made by the RAB(s) and a description of the manner in which the PHA addressed these recommendations (see next section).

Pre-submission Details

Certification of IMS/PIC Data

Each year, a PHA must certify to HUD the accuracy of the data in the Inventory Management System/Public Housing Information Center (IMS/PIC) as of a reporting date and must finalize the certification by a deadline established by HUD. The Capital Fund formula is based on the unit information certified by PHAs so it is important that data be entered correctly and certified by the deadline.

If a PHA has not completed certification of IMS/PIC data by the deadline, HUD may suspend access to all Capital Fund LOCCS accounts for that year until the certification is complete. HUD will run the formula based on uncertified data and issue an ACC amendment but will suspend the Capital Fund grant until completion of the certification.

HUD may adjust the Capital Fund grant amount after certification but will not increase the funding from the amount resulting from the uncertified data. Obligation and expenditure end dates will not be extended as a result of any suspension.

Board Resolution

A PHA must have a copy of a board resolution on file approving its 5-Year Action Plan. *Note*: Only PHAs that are troubled must submit a copy of this resolution in the Capital Fund submission.

If a PHA has not held a board meeting on the 5-Year Action Plan for the current fiscal year at the time the Capital Fund grants are awarded, it may use the public hearing and board resolution from its most recent 5-Year Action Plan.

If a PHA does not have a 5-Year Action Plan approved by its Board of Commissioners and HUD, HUD will reserve the capital funds and obligate to the PHA, but the PHA will not have access to those funds until the board resolution is obtained and HUD approves the Capital Fund Submission. Obligation and expenditure end dates will not be extended as a result of this suspension.

System for Award Management (SAM)

All PHAs were required to obtain a DUNS number no later than April 2012 and to submit a certification to their local field office to demonstrate compliance with this requirement. No further action is required by PHAs to demonstrate that they have obtained the requisite DUNS number.

The PHA's SAM registration must be updated annually. If a PHA does not have a current SAM registration at the time capital funds are distributed, HUD will suspend the PHA's access to the funds until the PHA provides evidence of its current SAM registration to the field office. Once the field office receives the evidence, it will release the suspension, and the funds will be available for use. Obligation and expenditure end dates will not be extended as a result of the suspension.

SUMMARY OF PLANNING STEPS FOR CAPITAL FUND SUBMISSION

Planning the Capital Fund Submission
Physical Needs Assessment
Energy Audit
Public Hearing (with 45 days' notice)
RAB Consultation
Certification of IMS/PIC Data
Board Resolution approving 5-Year Action Plan
DUNS Number
Current SAM Registration

CAPITAL FUND SUBMISSION

Beginning in FFY2017, PHAs will be required to submit their Capital Fund Plans and budgets electronically. Notice 2016-21, issued on December 2, 2016 became effective beginning with PHAs with fiscal years ending on March 31, 2017.

Capital Fund processing guidance was published in June 2016 and directed PHAs with FYE March 31 and June 30 to electronically submit their 5 Year Action Plan and budgets through HUD's EPIC system.

PHAs with FYE ending September 30 and December 31 may submit their 5 Year Action Plan and budgets in hard copy as before or, with the approval of their field office, may submit their plan and budgets electronically.

Beginning with the FFY 2018 Capital Fund allocation, all PHAs will be required to submit electronically.

Capital Fund submissions that are received after the due date will have the same Obligation End Date as those that were submitted in a timely manner.

If a Capital Fund submission is not received by the deadline, HUD will issue a second deadline to submit the signed ACC Amendment to the field office. If the field office does not receive the executed ACC by the second deadline, HUD may, in its discretion, de-reserve the applicable capital funds.

CONTENTS OF CAPITAL FUND SUBMISSION

1. ACC Amendments

PHAs will find their prepopulated ACC Amendments on the HUD Capital Fund website. PHAs must submit three originals, signed and dated, for CFP ACC Amendments, ACC Amendments for First Increment RHF Grant(s), if applicable, and ACC Amendments for Second Increment RHF Grant(s), if applicable.

2. CFP 5-Year Action Plan

The action plan must describe the capital improvements necessary to ensure long-term physical and social viability of the PHA's public housing developments, including the capital improvements to be undertaken within the five-year period, their estimated costs, status of environmental review, and any other information required for participation in the CFP.

In order to be entitled for fungibility, PHAs must have an approved 5-Year Action Plan.

Except in the case of emergency/disaster work, the PHA is not allowed to spend capital funds on any work not included in the 5-Year Action Plan and its amendments

3. Budget

In order to be entitled to fungibility of work items, PHAs must have an approved 5-Year Action Plan. Except in the case of emergency work or a non-presidentially declared natural disaster, the PHA can only spend capital funds on work that is included in an approved 5-Year Action Plan and its amendments. The 5-Year Action Plan may be fixed or rolling. Fixed plans are updated at least once every 5 years and submitted annually only if the PHA is requesting a change that constitutes a significant amendment in a particular year. Rolling plans are updated annually and submitted annually.

The 5-Year Action Plan must include a budget for each year covered by the plan. The budget is used to identify the work items for the upcoming year and amounts to be allocated to those work items. It also provides the information HUD needs to spread the funds into LOCCS. If the PHA has an approved Capital Fund Financing Program loan, the budget should include debt service payments for the grants from which the payments are scheduled

4. Performance and Evaluation Report

All PHAs must prepare a CFP annual statement/performance and evaluation report at a time and in a format prescribed by HUD.

- These reports must be retained on file for all grants for which a final Actual Modernization Cost Certificate (AMCC) or an Actual Development Cost Certificate (ADCC) has not been submitted.
  - A final performance and evaluation report must be submitted in accordance with 24 CFR 905.322, at the time the PHA submits its AMCC or ADCC.

PHAs that are troubled under PHAS or troubled under SEMAP and/or were identified as noncompliant with obligation and expenditure requirements during the fiscal year, must submit their CFP annual statement/performance and evaluation reports to HUD for review and approval.

All other PHAs, that are not troubled under PHAS or SEMAP, and that were in compliance with obligation and expenditure requirements during the fiscal year, must prepare a CFP annual statement/performance and evaluation report for all open grants and must retain the report(s) on file at the PHA, available to HUD upon request.

5. PHA Criteria for Significant Amendment or Modification to the CFP 5-Year Action Plan

The PHA must include the basic criteria that the PHA uses for determining a significant amendment or modification to the action plan. For those PHAs submitting electronically, a hard copy of the significant amendment or modification criteria must be submitted along with the required hard copy certifications.

Note: In addition to the criteria established by your PHA, for the purpose of the CFP, any proposed demolition, disposition, homeownership, Capital Fund financing, development, or mixed-finance proposal are considered significant amendments.

If the PHA makes significant amendments or modifications to the CFP 5-Year Action Plan, the PHA:

- May not adopt the amendment or modification until the PHA has duly called a meeting of the Board (or similar governing body) and the meeting at which the amendment or modification is adopted, is open to the public; and
- May not implement the amendment or modification until notification of the amendment or modifications are provided to and approved by HUD.

6. Additional Certification

The PHA is also required to submit various certifications to HUD including:

- Disclosure of Lobbying Activities (Standard Form SF-LLL)
- Civil Rights Compliance in a form prescribed by HUD
- Certification of Payments to Influence Federal Transactions (currently Form HUD-50071)
- Certification of Compliance with Public Hearing Requirements in a form prescribed by HUD

Note: For the certifications regarding civil rights compliance and completion of public hearing requirements, a PHA can submit the certifications adopted with its most recent PHA Plan. This affects timing only; each certification must be updated and submitted annually.

PHAs submitting their 5-Year Action Plans electronically must send hard copies of these certifications to HUD.

As an example the timeline for FY 2020 Capital Fund Program grants is produced below.

Timeline for FY 2020 Capital Fund Program (CFP) Formula Grants		
PHA, HUD Headquarters (HQ), and Field Office (FO) Actions		**Significant Dates**
1.	PIH HQ Posts to Office of Capital Improvements Website • CF grant amounts • FY 2020 CF Program ACC Amendments	**No later than February 14, 2020**
2.	PIH HQ emails notification to PHAs that ACC Amendments are posted	**No later than February 18, 2020**
3.	Three original signed and dated ACC Amendments for each FY 2020 formula grant must be received in the FOs	**March 12, 2020**
4.	FOs execute ACC Amendments for FY 2020 CF grants	**March 26, 2020**

<u>FY 2020 CFP Formula Grant Contract Dates</u>

Obligation Start Date	March 26, 2020
Obligation End Date	March 25, 2022
Disbursement End Date	March 25, 2024

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Section 5 Timely Submission of the Capital Fund ACC Amendment by the PHA

Upon being provided with a CF ACC Amendment from HUD, the PHA must sign and date the CF ACC Amendment and return it to HUD by the date established.

HUD will execute the signed and dated CF ACC Amendment submitted by the PHA.

If HUD does not receive the signed and dated Amendment by the submission deadline, the PHA will receive the CF grant for that year; however, it will have less than 24 months to obligate 90 percent of the CF grant and less than 48 months to expend these funds because the PHA's obligation state date and disbursement end date for these grants will remain as previously established by HUD.

Section 6 Electronic Submission

Notice PIH 2016-21 was published on December 2, 2016 and became effective immediately.

In late June 2017 HUD provided guidance that indicated that only those PHAs with FYEs on March 31, 2017 and June 30, 2017 were required to submit electronically. PHAs with FYEs of September 30 and December 31, 2017 may opt to submit hard copies of their 5-Year Action Plan and budget or, with permission from their field offices, may submit electronically.

The electronic process will replace the paper submission process and it is expected to make Capital Fund Plan submissions and budget revisions more efficient for both HUD and housing agencies.

To submit electronically, PHAs will use HUD's Energy Performance & Information Center (EPIC). Detailed information on using EPIC is included on the Capital Fund page of HUD's website.

In addition to replacing the hard copy submission process with electronic submission, HUD has established a new broader Budget Line Item (BLI) structure that will be utilized in both EPIC and eLOCCS. This change is expected to reduce the need for PHAs to submit budget revisions.

Below is a screen shot showing the BLI structure previously used on the left side and the new structure PHAs will begin using under the electronic submission process.

Line Item	Name
0100	~~Reserved Budget~~
0110	~~Initial Budget~~
1406	Operations
1408	Management Improvement
1410	Adminstration
1411	Audit Cost
1430	Fees & Costs
1440	Site Acquisition
1450	Site Improvement
1460	Dwelling Structures
1465	Dwelling Equipment
1470	Non-Dwelling Structures
1475	Non-Dwelling Equipment
1485	Demolition
1490	~~Replacement Reserve~~
1492	MovingToWorkDemonstration
1495	Relocation Costs
1499	Development Activity
1500	Indian Housing Grants
1501	Collater Exp / Debt Srvc
1502	Contingency
1503	RAD-CFP
1504	RAD Investment Activity
9000	Debt Reserves
9001	Bond Debt Obligation
9002	Loan Debt Obligation
9900	Post Audit Adjustment

Line Item	Name
1406	Operations
1408	Management Improvement
1410	Adminstration
1480	**General Capital Activity**
1492	MovingToWorkDemonstration
1501	Collater Exp / Debt Srvc
1503	RAD-CFP
1504	RAD Investment Activity
9000	Debt Reserves
9001	Bond Debt Obligation
9002	Loan Debt Obligation
9900	Post Audit Adjustment

EPIC is already used by housing agencies to report on planned and completed energy efficiency measures, so many users are already familiar with the system.

Using the Activity Planning Module in EPIC will allow PHAs to perform their capital planning activities electronically, as well as meet submission requirements.

The electronic submission automates the development, submission, approval and revision processes of PHA 5-Year Action Plan and budgets.

- The required annual certifications (Disclosure of Lobbying Activities, Civil Rights Compliance in a form prescribed by HUD, Certification of Payments to Influence Federal Transactions-currently Form HUD-50071, Certification of Compliance with Public Hearing Requirements in a form prescribed by HUD, Criteria for Significant Amendment or Revision) will be, for the foreseeable future, submitted in hard copy.

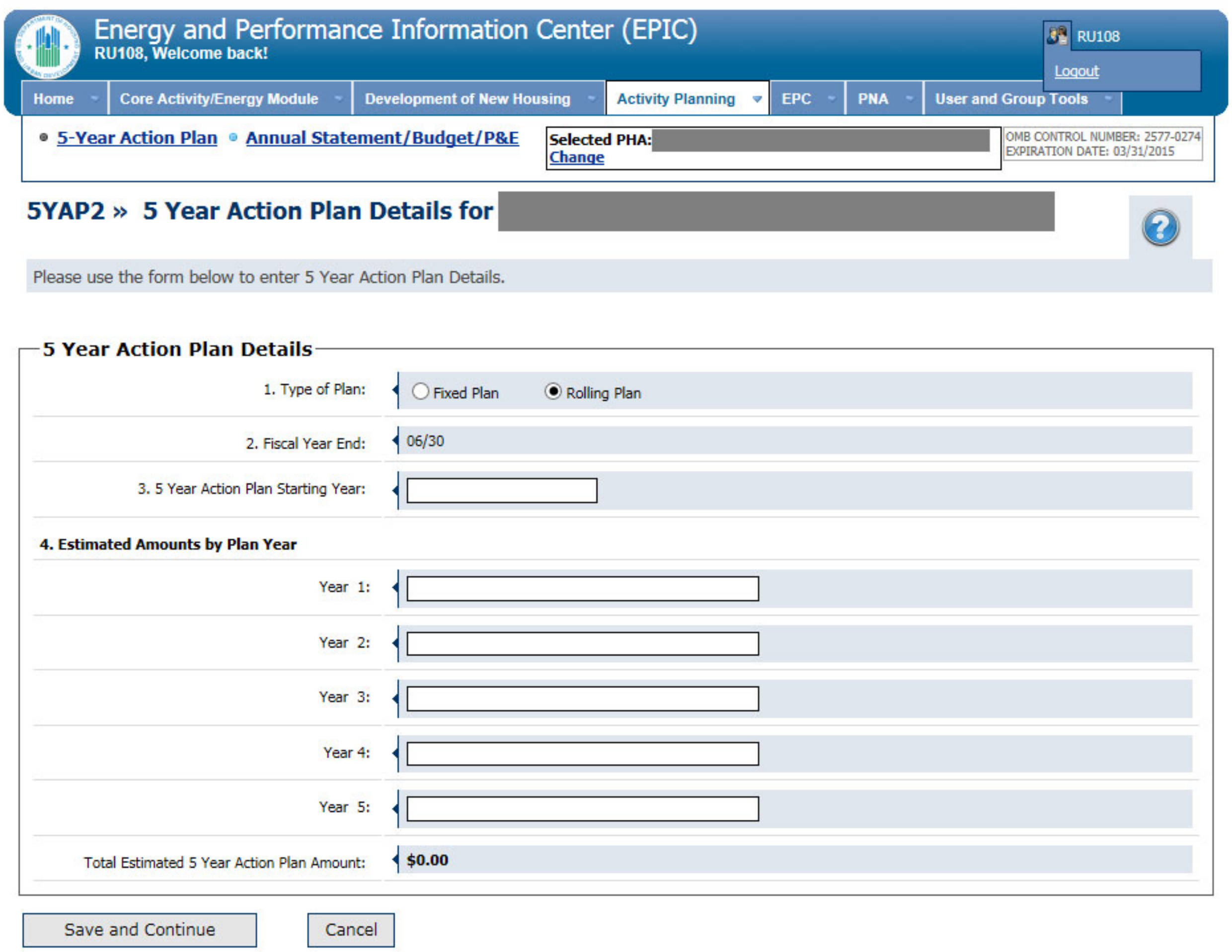
After a PHA has submitted their 5-Year Action Plan in EPIC, the field office will review and approve the Plan or may request additional information prior to approval.

Once the Plan has been approved, the PHA can revise the estimated award to reflect actual award or can revise approved activities from one year to another without field office approval.

Section 7 Creating the 5-Year Plan in EPIC

Draft plans can be started in EPIC, saved, and revised until the PHA is ready to submit the 5-Year Action Plan to HUD.

To begin creating a new 5-Year Action Plan in EPIC, a PHA has to enter the type of plan (fixed or rolling), starting year and estimated amounts by plan year.



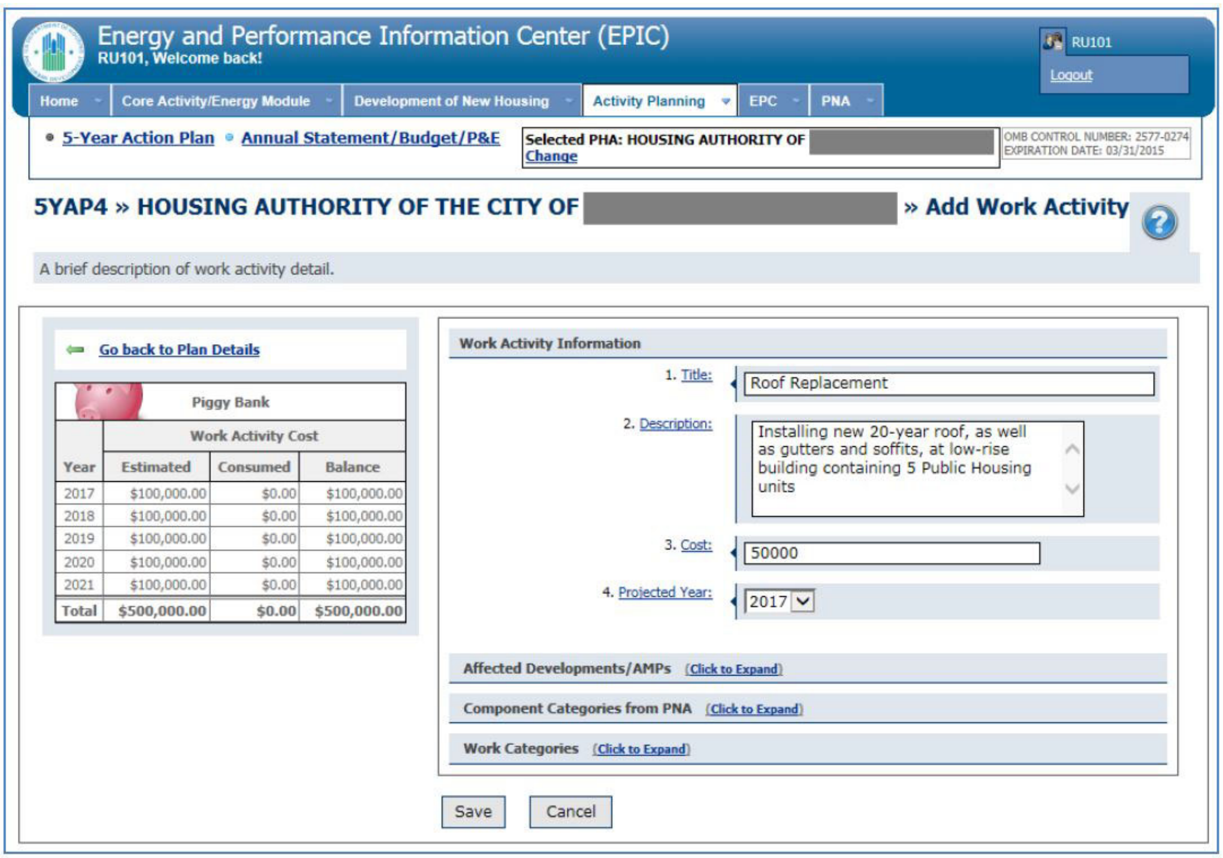
In Section 4, Estimated Amounts by Plan Year, the first year may be pre-populated by HUD. If not, enter the same amount of funding received (with exceptions noted below) for the most recent grant year for all years. Once the PHA is notified of its actual grant amount, that year's grant amount is revised in EPIC.

Adjustments to each year should be made for certain exceptions including:

- Estimated amounts for the expiration or reduction of eligibility for replacement housing funds (RHF) or demolition and disposition transition funding (DDTF) grants
- If the PHA expects to borrow funds through the Capital Fund Financing Program or an Energy Performance Contract, the expected proceeds should be included in the appropriate year's estimate.
- If the PHA expects other substantial funding (for example, tax credit proceeds), these should be included in the estimate
- PHAs with a CHAP under RAD or multiphase RAD projects that are planning to remove PH housing should deduct the estimated amount of the Capital Fund that would be made available for the units that are converted under RAD.

The next step in developing the 5-Year Action Plan in EPIC is to add work activities. The EPIC system includes the same rows that are found in the current hard copy 5-Year Action Plan and must be eligible activities under the CFP.

A work activity could include a capital project in progress using force account labor, an eligible activity - Administration - or a list of work needed to be done at a specific site or location.



Complete work activity information includes a title, the description of the work, estimated or actual cost and the year the work is projected to be undertaken or completed.

If the PHA is planning to complete a work activity using force account labor, the activity must include the words "Force Account" in the title of the work activity.

Because HUD will use the PHA's information in EPIC to update the BLIs in LOCCS, each work activity should be associated with a single BLI in EPIC. And, each work activity must be aligned with a single project year and development.

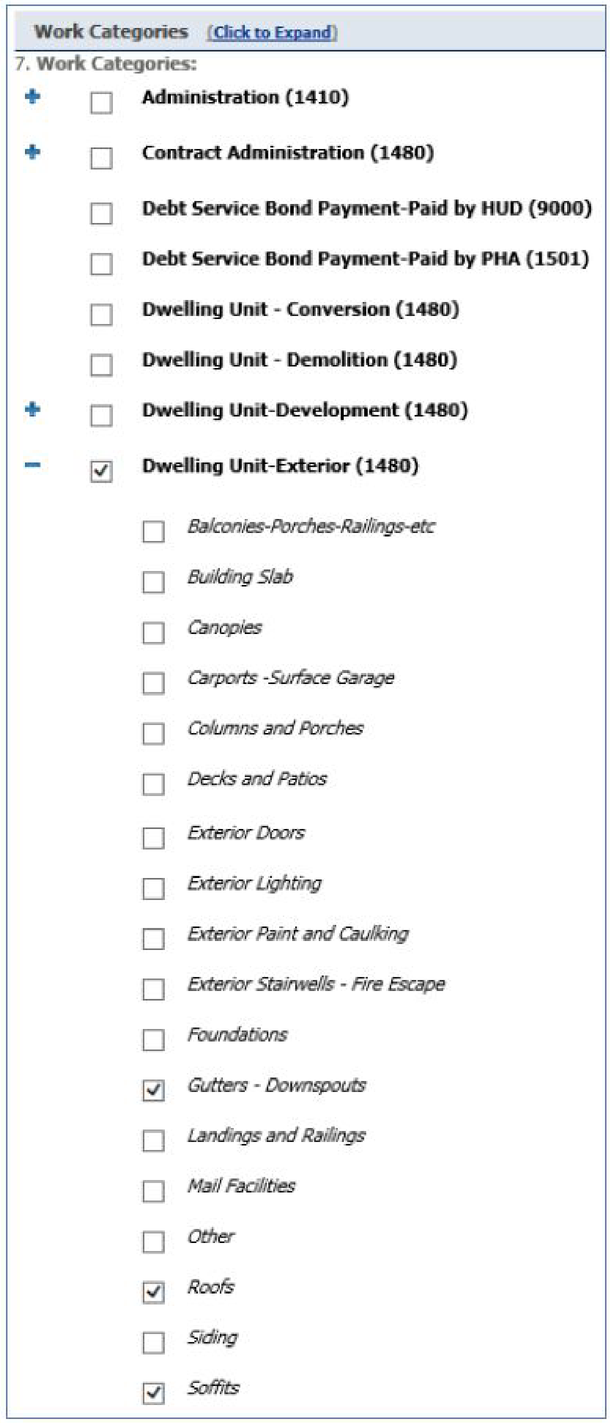
If a work activity will take multiple grant years to complete or be done at several developments, the work activity must be included under each grant year. An example would be that a PHA will be replacing doors and windows in 100 units with 50 units scheduled for completion in 2017 and 50 completed in 2018. In this case the PHA would enter a separate work activity for 2017 and 2018 and include the funds to be expended in each of those years.

Each work activity is to be associated with a specific development. For any costs not associated with a specific development - Administration - the PHA would select "N/A" for the entry "Affected Developments/AMPS."

Work Categories

Each work category in EPIC includes the BLI structure. A PHA will select the appropriate work category and, if applicable, the sub category or sub categories.

A screen shot of part of the new structure is shown below. Those categories with a plus sign (+) can be clicked and expanded to include more detailed activities. The Dwelling Unit Exterior line has been expanded as an example.



Section 8 HUD Review and Approval of 5-Year Action Plans in EPIC

Prior to submission of the Plan, the PHA can actually add, delete or modify work activities as well as export a final draft plan to print. This will facilitate producing the Plan for review by residents, stakeholders and the general public.

Once a PHA submits its 5-Year Action Plan and budgets in EPIC, the Plan becomes locked and cannot be edited. Field offices will follow their normal review protocols when reviewing plans submitted in EPIC. Additional key factors that may be considered include:

- That the description of each work activity provides enough information for field office review;
- That the description is complete enough for the field office to assess the type and level of environmental review required;
- That the Plan addresses identified current capital needs of the PHA

Once the field office has approved the 5-Year Action Plan in EPIC, the plan will be unlocked and the PHA can continue to modify the plan to reflect changing award amounts or management decisions.

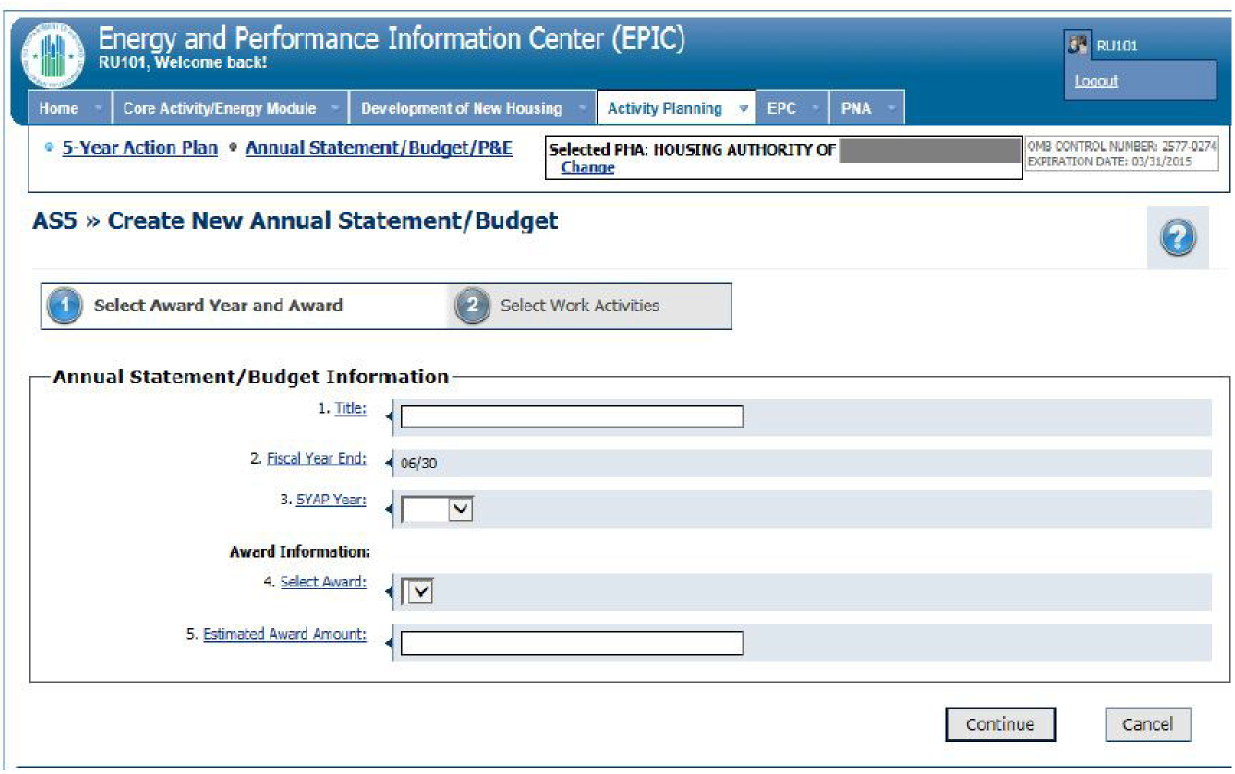
- Changes that will not require HUD approval include rescheduling approved work activities between years, revision of estimated funding amounts to reflect actual costs following contract or procurement actions, deletion of work activities.
- Changes that still require HUD approval include addition of new work activities, a decision to use force account labor or an expansion of the work categories.

Section 9 Creating A Budget in EPIC

Once a PHA's 5-Year Action Plan is approved, it becomes the basis for budget development and reporting within EPIC.

When a PHA's plan is approved, the PHA may or may not have received the Capital Fund grant allocation for the year. If the grant amount has been received, the EPIC system will be pre-populated from LOCCS. Amounts pre-populated cannot be edited. If an award for a plan year has not been received, the PHA should create the budget using the estimated award amount and once the award is received, the PHA can link the budget to the appropriate year in EPIC.

Until the PHA links the budget in EPIC with the actual grant award, the PHA cannot draw down funds.



The budget will only include approved work activities from the approved plan. A PHA will select applicable work activities to add to the budget and can select approved work activities approved from other years of the 5-Year Action Plan to add to the budget. Activities can be shifted between years or in different order if the PHA has decided on a change of plans or priorities.

For each work activity included in the budget the following information is included:

- BLI information - automatically set by the work category selections
- Work Categories - sub categories can be updated to reflect a change in scope of a work activity
- Other measures - a PHA has the option to enter information on whether or not the work item includes accessible features, security costs, energy/water conservation components or lead based paint. This is not mandatory, at this time.

Before submitting the budget report to HUD, it is important to ensure the budget is balanced - the budget amount must equal the work activities amounts, the BLI amounts must be aligned, and each budget must be linked to an actual grant award.

Section 10 Resident Advisory Board (RAB)

BASIC RESIDENT ADVISORY BOARD REQUIREMENTS

Each PHA must establish one or more resident advisory boards, the membership of which adequately reflects and represents the residents assisted by the PHA (public housing and HCV as applicable).

Each resident advisory board established by a PHA assists and makes recommendations regarding the development of the public housing agency plan and CFP 5-Year Action Plan for the agency.

The law requires PHAs to consider the recommendations of the RABs. The agency must consider the recommendations of the resident advisory boards in preparing the final public housing agency plan and CFP 5-Year Action Plan. The PHA is expected to give careful consideration to the recommendations, but is not required to agree to them. PHAs are required to submit as an attachment to the 5-Year and annual plan copies of the recommendations of the RABs and a description of the PHA's analysis of the recommendations and decisions made on the recommendations.

HUD may waive the requirements with respect to the establishment of resident advisory boards for a PHA if the PHA demonstrates that there exist resident councils or other resident organizations of the PHA that adequately represent the interests of the residents of the PHA and have the ability to perform the functions described.

Notice PIH 2001-26

To ensure that each RAB is fully informed and engaged in the plan process, PHAs are required to promptly provide a copy of the HUD award letter (identifying formula share allocations for Capital Formula and drug elimination programs), plan approval letter, and at least one copy of the approved plan to each RAB.

RABs are expected to be actively involved in the development of PHA plans. RABs should reach out to ensure that the views of all families in public housing and Housing Choice Voucher programs are as well represented as possible. Residents also should make every effort to be informed, should volunteer for membership on RABs and generally should be involved in the development of plans through the RABs. PHAs must ensure that RABs are actively involved, and should set up timelines and procedures for RAB notification and involvement.

PHAs are required to allocate reasonable resources to assure the effective functioning of RABs This means PHAs must provide reasonable means for RABs to become informed on programs, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

The United States Housing Act (USHA) requires a RAB. If a PHA has made every effort but still has been unsuccessful in finding residents to serve on a RAB, the PHA could appoint all its residents as the RAB. Should this occur, the PHA must provide adequate notice to the residents that all residents are appointed to the RAB and should follow the procedures for notification. The PHA must also ensure that a RAB consisting of all the residents is provided the same opportunities to comment on the PHA plan and CFP 5-Year Action Plan and to submit any additional comments in writing to the PHA. The PHA will consider these resident comments when drafting the final plan in the same manner as for other RABs and include any comments provided by its residents when it submits its plans to HUD.

Learning Activity 3-2: Discussion

Does your PHA have an active RAB? What has been done to encourage participation? If more participation is needed or desired, what could your PHA do to encourage more participation?

Section 11 Summary

PHA Submission Requirements

5-Year Action Plan entered into EPIC: As noted above, to be authorized to spend FY2020 CFP Grants, PHAs must have a CFP 5-Year Action Plan that includes FY2020 entered into EPIC.

As was the case in 2019, HUD Field Offices will review and approve CFP 5-Year Action Plans in EPIC following their normal review protocol. In addition to the review practices currently in place, FOs will review the appropriateness of estimated grant amounts and work activities pursuant to the guidance provided in PIH Notice 2016-21. Once the Field Office Director has approved a CFP 5-Year Action Plan in EPIC, the PHA may then continue to modify the plan to reflect changing circumstances and decisions. While many modifications, such as adjusting estimated amounts, do not require additional FO approval, other changes, such as the addition of new work activities, will require FO review and approval in EPIC.

See PIH Notice 2016-21 for more information on EPIC. The notice is available at: https://www.hud.gov/sites/documents/PIH-2016-21.PDF

PHAs receiving CFP grants are also required to submit various certifications to HUD; EPIC's Activity Planning Module does not currently automate these certifications, and PHAs must continue to submit these certifications.

Written Statement Defining Significant Amendment/Modification: Each PHA must submit a written statement defining the criteria the PHA will use for determining a significant amendment or modification to the CFP 5- Year Action Plan. In addition to the criteria established by the PHA, a proposed demolition, disposition, homeownership, RAD conversion, Capital Fund Financing, development, or mixed finance proposal is considered by HUD to be significant amendment to the CFP 5-year Action Plan based on the Capital Fund Final Rule. This must be submitted as a separate written statement.

Required Certifications:

☐ Certification of Compliance w/Public Hearing: (PHA must have a copy of one of the following.)

Non-Qualified PHAs - HUD form HUD-50077-ST-HCV-HPincludes this certification

Y / N Was the public hearing conducted in FY 2020

Qualified PHAs - A statement certifying that the PHA conducted a public hearing in compliance with 24 CFR Part 905, signed and dated by the executive director.

Y / N Was the public hearing conducted in FY 2020

☐ HUD form 50071, Certification of Payments to Influence Federal Transactions

☐ Civil Rights Certification: (PHA must have a copy of one of the following.)
Non-Qualified PHAs - HUD form HUD-50077-ST-HCV-HP
Qualified PHAs - HUD form HUD-50077-CR
☐ Lobbying Form – SFLLL (if required in accordance with the form's instructions)

Public Hearing Requirement: PHAs are encouraged to combine the Capital Fund submission hearing with the PHA Plan hearing. If a PHA has not yet submitted its PHA plan for FY 2020 and has not held a public hearing, it may use its most recent public hearing from the PHA plan or CFP 5-Year Action Plan process. However, the PHA must conduct a public hearing to cover the new work activities proposed for the 2020grant(s) (typically incorporated in the PHA Plan Process) before it can use Capital Funds for those work items. The PHA can continue to perform work items in the previous year's approved CFP 5-Year action plan.

Civil Rights Certification and Lobbying Form SFLLL: If the PHA has already submitted a HUD-50077-ST-HCV-HP or HUD-50077-CR and the SFLLL with its PHA Plan for FY 2020, a copy of the document can be submitted.

ACC Amendments

☐ 3 Signed and Dated Original ACC Amendments for Capital Fund Formula Grant

☐ (RHF PHAs only) 3 Signed and Dated Original ACC Amendments for 1st Increment RHF Grant

☐ (RHF PHAs only) 3 Signed and Dated Original ACC Amendments for 2nd Increment RHF Grant

Annual Budget and Capital Fund 5-Year Action Plan

☐ Electronic submission OR HUD form-50075.1 (Parts 1 & II) Annual Statement - PHA must sign and date. *Note*: in FFY 2018, all PHAs were required to submit electronically.

☐ HUD form-50075.2 Capital Fund 5 Year Action Plan (fixed or rolling)

☐ Statement of Significant Amendment

Certifications

☐ Lobbying Form - SFLLL

☐ Certification of Compliance w/PHA Plan & Related Regulations: HUD Form-50077

☐ Civil Rights Certification: Annual Certification & Board Resolution HUD Form-50077-CR

☐ HUD form-50071, Certification of Payments to Influence Federal Transactions

Section 12 Chapter 3 Post-Test

1. A principle in good capital planning is:
   a. Do it all yourself
   b. Communication and a plan
   c. Bricks and mortar only
   d. Use the same contractors year after year
   e. Include whatever the residents request so they will be happy and won't complain about their units.
2. Long range planning for modernization should include the following:
   a. Housekeeping violations
   b. Work order trend analysis reports
   c. Day to day work order reports
   d. UPCS systemic defect data
   e. b, c, and d
3. Once a long-range plan has been approved and implementation has begun:
   a. No further follow up is needed
   b. The plan should be monitored and revised if necessary
   c. The plan, if well-thought out to begin with, should not ever have to be revised
4. Developing a preventive maintenance, (PM) program is an eligible Capital Fund expense:
   a. For ongoing preventive maintenance expenses, with no time limit
   b. Only for the development and initial start up
   c. Not an eligible expense
   d. Up to PHA policy
5. Using Capital Funds, the standardization of plumbing fixtures can be a goal that will save time and expense for the maintenance operation.
   a. True
   b. False

6. Question #5, above, is an example of:
    a. Emergency maintenance
    b. Routine maintenance
    c. Preventive maintenance
    d. Uniform Physical Condition Standards (UPCS
7. All PHAs will be required to electronically submit their 5-Year Action Plans and budgets in FFY 2020.
    a. True
    b. False
8. The following is true regarding the CF submission comments:
    a. The PHA must consider the comments from its residents
    b. The PHA must consider the comments from the public
    c. The PHA must consider the comments from its Resident Advisory Board (RAB)
    d. All of the above
9. The requirement for the PHA to annually conduct a public hearing to discuss the CF submission is now eliminated. The PHA may solicit comments from written notification only.
    a. True
    b. False
10. The PHA must submit a Board-approved CFP Action Plan at least once every:
    a. Year
    b. Five years
    c. Two years
    d. Ten years
    e. Up to PHA policy
11. The PHA may not choose to update its CFP Action Plan every year.
    a. True
    b. False

12. A qualified PHA:
    a. Is exempt from the requirement to hold an annual public hearing on the Capital Fund Action Plan
    b. Is exempt from submitting a PHA Annual Plan
    c. Is exempt from the requirement to submit a 5-Year CF Action Plan
    d. All of the above
13. A qualified PHA is defined as:
    a. A PHA with public housing units and vouchers adding up to 550 or fewer
    b. Not designated as troubled
    c. Does not have a failing score under SEMAP
    d. All of the above
    e. Both b and c
14. If a PHA is a high performer under PHAS and has less than 250 units, the PHA may solicit comments for its CFP Action Plan from written notification only.
    a. True
    b. False
15. Residents have requested new stoves and refrigerators, but the PHA did not include new stoves and refrigerators in the CFP submission. Is this grounds for disapproval by HUD of the PHA's CFP Plan?
    a. Yes, resident requests are required to be included in the CFP Plan
    b. No, the PHA is required to consult with residents and consider their input

CHAPTER 4 Physical Needs Assessment

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Understand the purpose of a Physical Needs Assessment
- Understand the importance of Energy Audits and energy conservation methods

Section 1 Introduction

The final rule expands HUD's current requirement that a PHA submit a physical needs assessment (PNA) to include small PHAs as well as large PHAs, however, the rule provides small PHAs additional time to plan for and implement this requirement.

- The rule delays the requirement for small PHAs until six months after HUD's publication of a notice in the *Federal Register.*

HUD PROPOSED REGULATION FOR GPNA/EA ARE ON HOLD

The Office of Public and Indian Housing (PIH) is developing a Physical Needs Assessment (PNA) process to achieve a number of critical goals in the management of public housing and HUD's oversight of Public Housing Authorities (PHAs).

The primary objectives of the new PNA process will be to:

1. Enable HUD to measure the impact of annual Capital Fund appropriations on the physical needs of the public housing inventory
2. Enable PHAs to better assess the capital needs of their portfolios, to facilitate capital planning and to allow PHAs to take advantage of capital improvement opportunities
3. Evolve the management practices of PHAs toward development-based capital planning

4. Further the energy integration goals of the 2005 Energy Policy Act
5. Produce data on green activities for the Capital Fund, in support of HUD's performance goal to create energy efficient housing

Capital Funds averaging more than $2 billion annually are provided to PHAs to modernize or develop public housing.

- Currently, HUD has no process in place to assess and measure the impact of these funds on the public housing portfolio.

Section 2 Background

We know that a PHA has an important function of reviewing the regular operating performance of a project. It also has the important task of planning for the long-term use of the asset. In order to handle this latter task, the following information is essential:

- **Physical needs assessment.** The PHA must know the condition of the housing portfolio and the cost of upgrades.
- **Market data.** The PHA should have an understanding of who the project currently serves, who it could attract, and the rents that it could command, both in its current condition, and with upgrades.
- **Asset value.** The PHA should have an understanding of the value of the asset, both in its current condition and with various upgrades.
- **Funding sources.** Finally, the PHA should understand the different funding sources available, either through the Capital Fund or private financing, to make improvements.

  Investment decisions, however, must also be considered within the context of the PHA's mission. PHAs share the same task of providing affordable housing to low-income families. Outside of this basic requirement, there can be a great deal of variation in mission, which would then affect goals and investment objectives.

Section 3 Physical Needs Assessment in the Planning Process

The Capital Fund planning process includes the Physical Needs Assessment (PNA) and energy audit to determine the extent of the PHA's capital needs. In addition, a PHA should consider the work accomplished during the last few years and any problems or issues identified in the PHA Plan. These resources will determine the public housing projects to be rehabilitated or redeveloped, multi-project modernizations, or other eligible activities to be accomplished with capital funding.

PHYSICAL NEEDS ASSESSMENT (PNA)

A PNA identifies all of the work that a PHA would need to undertake to bring each of its projects up to the applicable modernization and energy conservation standards. A PNA helps a PHA identify the capital needs of the public housing portfolio to facilitate capital planning.

HUD uses a PNA to measure the impact of annual Capital Fund appropriations on the physical needs of the public housing inventory. A PNA captures the total needs of a PHA, while the 5-Year Action Plan only includes work items the PHA can perform based on the funding it receives.

In order to receive future Capital Fund grants, PHAs will be required to comply with the final rule PNA requirements.The CFP final rule requires that large PHAs (250 units and more), which previously had a PNA requirement, must continue to perform a PNA in order to receive capital funds.

However, small PHAs (fewer than 250 units) will not be required to perform a PNA until the issuance of a notice implementing the requirement, which has not occurred.

ENERGY AUDIT

An energy audit identifies the types and costs of energy use in order to understand how energy is being used and to identify and analyze alternatives that could substantially reduce costs. A sufficiently detailed energy audit is helpful in planning effective expenditures of capital funds because it can be used to reduce down operating costs, including the cost of utilities.

The Purpose of a PNA

A “good” PNA will identify and provide cost estimates for:

- Immediate physical needs
- Physical needs over the expected building viability term
- Consider “as-is” versus “upgrade” options
- Also consider UPCS identified items listed as Systematic Defects as part of the PHAS Physical Score

Unlike most private housing, there is no requirement for PHAs to establish a reserve for replacement account. In conjunction with those replacement reserve accounts, owners will conduct detailed studies of existing and projected capital needs.

Like the replacement reserve studies in private housing, these PNAs should identify existing and projected capital needs. There has been no standard method, however, for how those PNAs were to be completed.

Section 4 Leading up to the PNA Requirement

Historically, as directed by Congress (approximately once a decade), HUD has conducted statistical sampling of PHAs to estimate the capital accrual and backlog needs of PHAs

- The last such sampling was completed in 2010.

As an additional data point, the PNA process will enable HUD to aggregate the needs data generated by PHAs to estimate the national needs number at any point in time that will include every project on the public housing portfolio.

- This is on hold.

The PNA process will allow this estimate to be updated on a continuous annual basis to reflect the trends of needs addressed with capital funds or other sources. The PNA will be performed every 5 years by PHAs.

At the same time, existing PNA requirements for PHAs are outdated and do not reflect the realities of capital planning in the housing industry generally.

- Existing PNA requirements have a short term focus with a planning horizon of only five years.

HUD has developed a PNA tool for use by PHAs for long term project based strategic planning. The new PNA tool will allow PHAs to assess the needs of their public housing portfolio over a planning horizon of 20 years, will produce useful reporting, and will automatically create HUD reporting.

- The PNA will enable PHAs to move more nimbly to take advantage of new opportunities as capital markets change and new programs and funding sources become available.

There has been an increasing focus within HUD and the housing industry generally, on energy conservation and green asset management.

- The 2005 Energy Policy Act amended the Capital Fund section of the U.S. Housing Act of 1937 to encourage the integration of "utility management and capital planning to maximize energy conservation and efficiency measures."
- PHAs are currently required to perform Energy Audits every five years pursuant to 24 CFR 965.
- However, energy audit data is not collected on a national basis, nor is it integrated with capital needs planning.
- The PNA tool will collect energy audit data to be integrated into the PHAs long term plan to allow the PHA to evaluate green improvements on a continuous basis rather than as an isolated activity once every 5 years at the time of the required energy audit.

Section 5 Current PNA Requirement

The final rule does not add new PNA requirements for large PHAs[1] but rather continues the current requirements with the only change being that small PHAs will also have to comply with those requirements.

- The first submission by a small PHA would not be sooner than six months after the end of the federal fiscal quarter after HUD publishes the notice in the *Federal Register*, which to date has not been published.

The current PNA requirements include:

- Completion of a brief summary of the physical improvements needed to bring each development to HUD standards for modernization, energy conservation life-cycle cost effective performance standards, and lead-based paint testing and abatement standards;
- Replacement needs of equipment and structural elements during the period covered;
- Preliminary estimate of cost;
- Any physical disparities between buildings occupied predominantly by one racial or ethnic group and the physical improvements required to correct the disparity; and
- The number of units the PHA is proposing for substantial rehabilitation and subsequent sale, if any.

1. Part 968, promulgated December 21, 1989, instituted a requirement for large (Comprehensive Grant) PHAs to complete a PNA as a part of the Comprehensive Plan.

QUALIFICATIONS FOR CONDUCTING THE PNA

There is no current or proposed regulation that requires PHAs to contract for PNA services for the purposes of meeting Capital Fund program requirements. Required PNAs may be performed by PHA staff.

- *Note:* The *proposed* PNA rule (which will be an addendum to the Capital Fund rule at 24 CFR 905.300) would require minimum experiential qualifications, but to the extent PHA staff has these qualifications (there is no certification or education requirement), PHA staff may continue to perform these in-house as the basis for their 5 year action plan and other local capital planning.
- Most large PHAs have staff that meet these experiential qualifications which may also be met by a team of individuals. (For example, maybe one team member has the physical inspection experience and another team member has the cost experience.)

It is important for PHAs to understand, however, that if they need a PNA for purposes of a RAD application, a financing, a transaction through HUD Multi-Family, or virtually any of a number of other purposes where they are accessing capital, a third party PNA is generally required. Those standards are determined by the program or lender.

Section 6 Upcoming PNA Rules

CURRENTLY ON HOLD

In addition to the PNA tool, the PNA process will include two new rules which serve to implement the PNA requirement and set out the basic outline and protocols of the process.

The **PNA Rule** will require all 3000+ PHAs nationwide to complete a comprehensive PNA for each of their public housing developments once every five years and to update these assessments annually.

A new **Energy Audit Rule** will establish standards for public housing energy audits, integrating energy conservation measures with capital planning in a holistic planning approach.

As of July, 2012 both rules are in the final rulemaking process.

The Green Physical Needs Assessment (GPNA) tool has been developed and pilot tested by HUD at nine PHAs ranging in size from 80 to 5400 units representing a total of 11,000 public housing units. In addition, nearly 20 PHAs have voluntarily participated in beta testing of the tool and provided comment on their experience with the tool.

A final version of the GPNA tool (version 1.0 dated July 2, 2012) including a final draft users guide is available to PHAs to begin using in advance of the final rules. In addition, we provide a working GPNA tool sample which has been populated with generic data so that users can begin to learn its functions and architecture. A memo was emailed to all PHAs on October 5, 2012 regarding this initiative.

Trainer Note:

The energy audit requirements are defined in 20 states' laws; otherwise are up to the contractor.

Section 7 GPNA Tool

CURRENTLY ON HOLD

As part of the new PHA process, HUD has developed a Green Physical Needs Assessment (GPNA) tool.

- The GPNA tool is a stand-alone Windows-based Microsoft Access® application, compatible with desktop PCs, notebook PCs, and/or network computers. The tool can also be installed and used on compatible hand held devices.
- The GPNA tool includes a comprehensive list of building/site building systems and components, with measurable line items, that make up a complete PNA. Components are based on the Public Housing Capital Fund Financing Program Form-52829, green physical condition assessments, Uniform Physical Condition Standards (UPCS), and other building industry components.
- Components are divided into five categories (same as PASS):
  - Site
  - Building exterior
  - Building systems
  - Common areas
  - Units
- Aggregated capital needs can be identified in several areas, including:
  - Replacement needs
  - Refurbishment needs
  - Accessibility needs
  - Marketability/livability needs
  - Sustainability needs

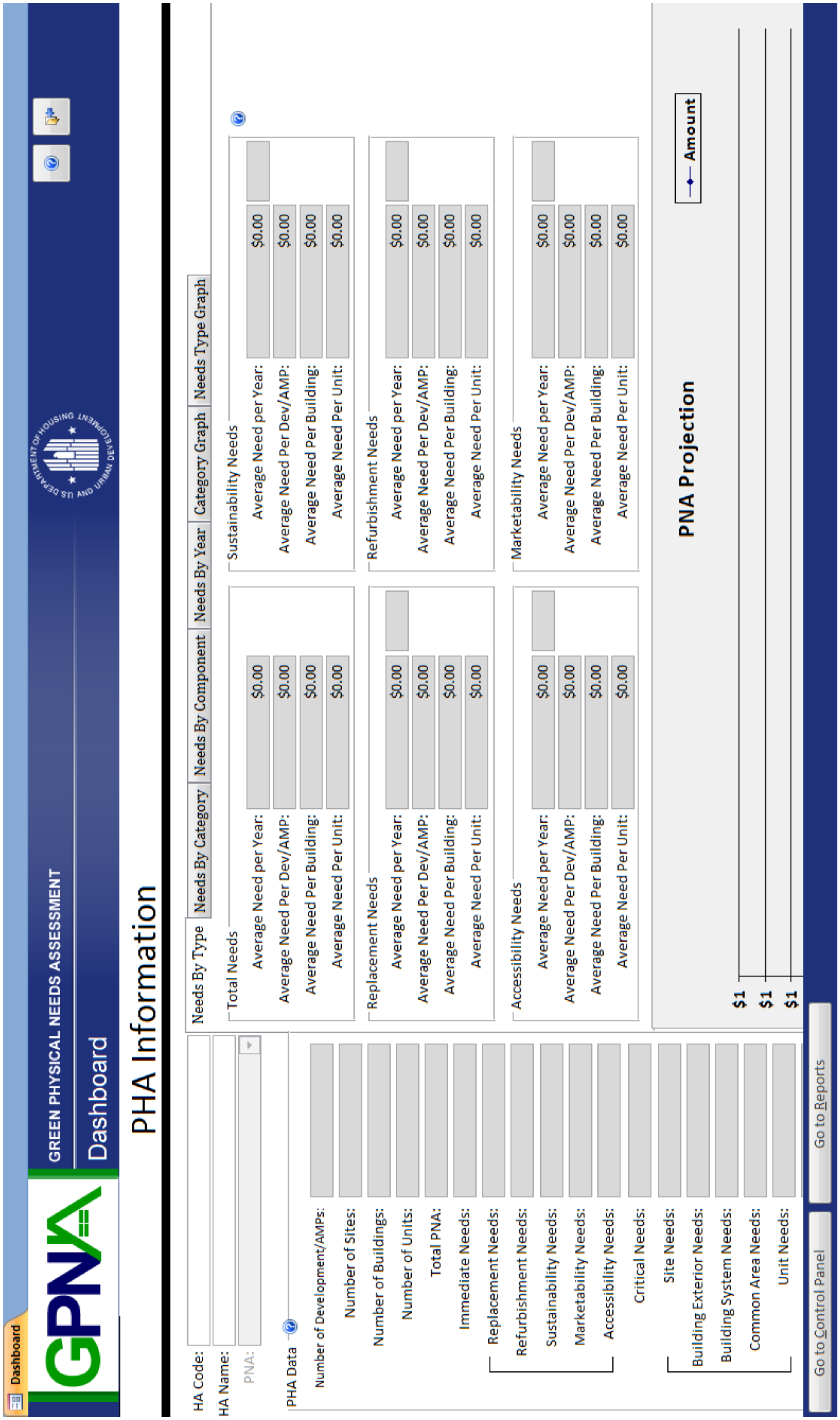
Unit-cost and Effective Useful Life (EUL) are applied to all building/site components in the PNA. Unit-costs are based on industry cost indices (e.g., R.S. Means, Marshall & Swift) chosen by the PHA. EUL is used as the basis for the replacement of components as they meet the end of their life cycles. These are entered in the Cost Libraries in the tool.

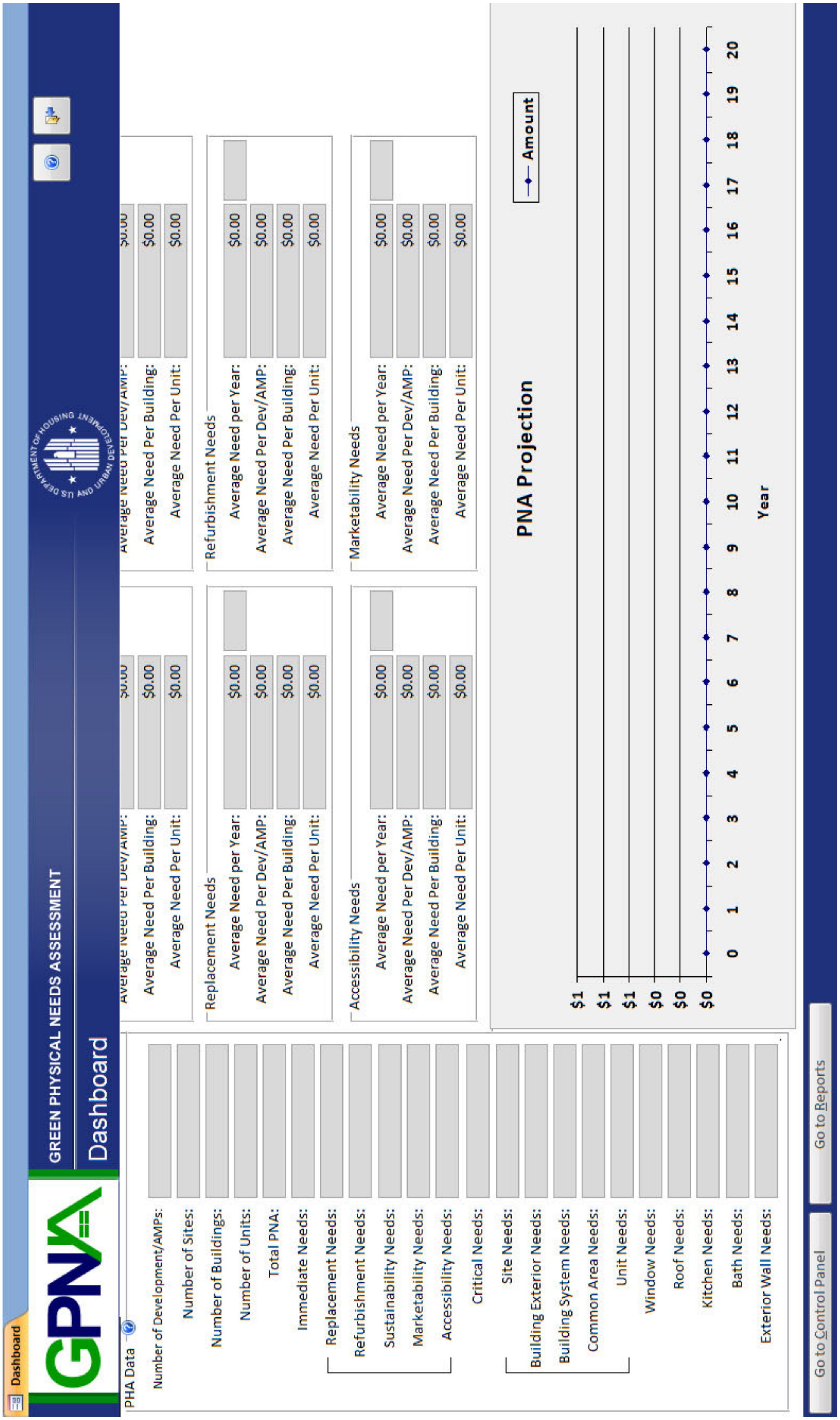
The inspection based tool collects Remaining Useful Life (RUL) information for each component as well as the quantity for each component on the inspection forms for each of the component categories.

These basic entries-EUL, cost, RUL, and quantity are used by the tool to automatically calculate and create a 20 year cost projection for each development/AMP. Other capabilities of the tool can expand the functionality for PHAs.

Screen Shots of GPNA

Following are screen shots of HUD's GPNA prototype tool.


Dashboard
GPNA
GREEN PHYSICAL NEEDS ASSESSMENT
Dashboard
PHA Information
HA Code:
HA Name:
PNA:
PHA Data
Number of Development/AMPs:
Number of Sites:
Number of Buildings:
Number of Units:
Total PNA:
Immediate Needs:
Replacement Needs:
Refurbishment Needs:
Sustainability Needs:
Marketability Needs:
Accessibility Needs:
Critical Needs:
Site Needs:
Building Exterior Needs:
Building System Needs:
Common Area Needs:
Unit Needs:
Needs By Type
Needs By Category
Needs By Component
Needs By Year
Category Graph
Needs Type Graph
Total Needs
Average Need per Year: $0.00
Average Need Per Dev/AMP: $0.00
Average Need Per Building: $0.00
Average Need Per Unit: $0.00
Sustainability Needs
Average Need per Year: $0.00
Average Need Per Dev/AMP: $0.00
Average Need Per Building: $0.00
Average Need Per Unit: $0.00
Replacement Needs
Average Need per Year: $0.00
Average Need Per Dev/AMP: $0.00
Average Need Per Building: $0.00
Average Need Per Unit: $0.00
Refurbishment Needs
Average Need per Year: $0.00
Average Need Per Dev/AMP: $0.00
Average Need Per Building: $0.00
Average Need Per Unit: $0.00
Accessibility Needs
Average Need per Year: $0.00
Average Need Per Dev/AMP: $0.00
Average Need Per Building: $0.00
Average Need Per Unit: $0.00
Marketability Needs
Average Need per Year: $0.00
Average Need Per Dev/AMP: $0.00
Average Need Per Building: $0.00
Average Need Per Unit: $0.00
PNA Projection
Amount
$1
$1
$1
Go to Control Panel
Go to Reports


Dashboard
GPNA
GREEN PHYSICAL NEEDS ASSESSMENT
Dashboard
PHA Data
Number of Development/AMPs:
Number of Sites:
Number of Buildings:
Number of Units:
Total PNA:
Immediate Needs:
Replacement Needs:
Refurbishment Needs:
Sustainability Needs:
Marketability Needs:
Accessibility Needs:
Critical Needs:
Site Needs:
Building Exterior Needs:
Building System Needs:
Common Area Needs:
Unit Needs:
Window Needs:
Roof Needs:
Kitchen Needs:
Bath Needs:
Exterior Wall Needs:
Average Need Per Building:
$0.00
Average Need Per Unit:
$0.00
Replacement Needs
Average Need per Year:
$0.00
Average Need Per Dev/AMP:
$0.00
Average Need Per Building:
$0.00
Average Need Per Unit:
$0.00
Refurbishment Needs
Average Need per Year:
$0.00
Average Need Per Dev/AMP:
$0.00
Average Need Per Building:
$0.00
Average Need Per Unit:
$0.00
Accessibility Needs
Average Need per Year:
$0.00
Average Need Per Dev/AMP:
$0.00
Average Need Per Building:
$0.00
Average Need Per Unit:
$0.00
Marketability Needs
Average Need per Year:
$0.00
Average Need Per Dev/AMP:
$0.00
Average Need Per Building:
$0.00
Average Need Per Unit:
$0.00
PNA Projection
Amount
$1
$1
$1
$0
$0
$0
0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20
Year
Go to Control Panel
Go to Reports

Section 8 Energy Conservation

BACKGROUND

Typically, "energy" refers to the use of gas, electric, and fuel (e.g., oil, coal, steam, propane, etc.)

- In public housing, "utilities" include the above but also water and sewer.
- In common literature, water/sewer are not considered "energy"; however, water/sewer are part of HUD's energy performance contracting requirements, and also are included in the funding of utilities.

Therefore, in this section, "energy" and "utilities" are interchangeable and includes water/sewer.

Energy consumption is important to HUD and PHAs for three reasons:

- Costs
- Protecting the environment
- National security

In the operation of their facilities, PHAs must follow operating practices directed to maximum energy conservation (24 CFR 965.306).

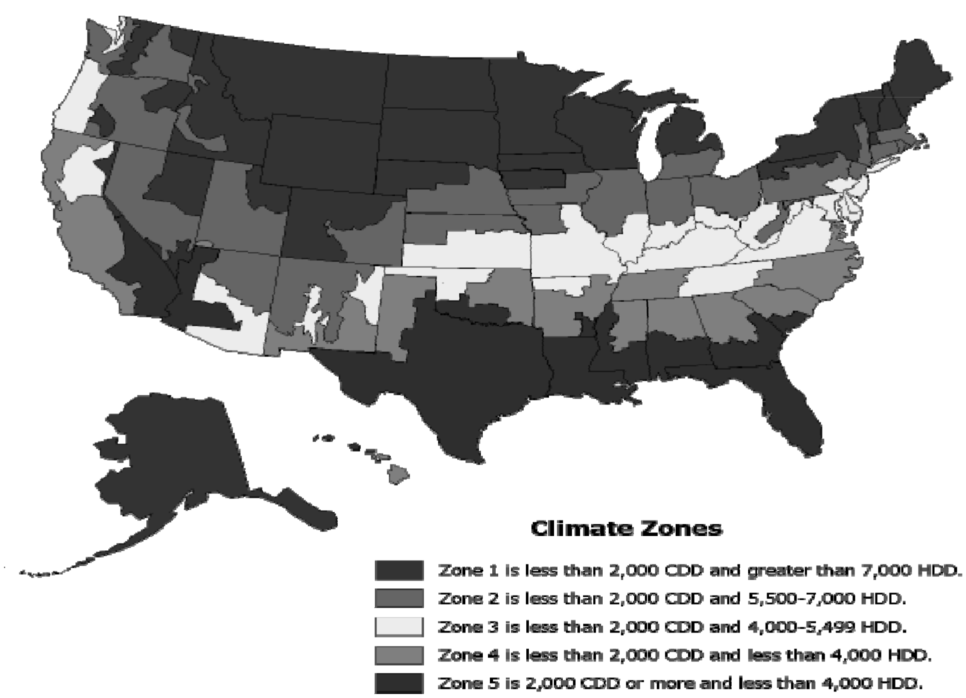
ENERGY COSTS

Total utilities expended in public housing amount to around **$2.0 billion**:

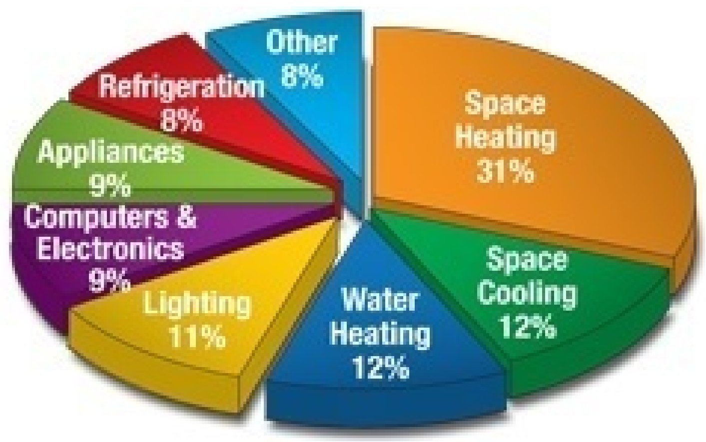
- $1.6 billion in project-paid utilities (paid directly by the PHA)
- $430 million utility allowances (paid by residents)

HUD requires individual metering to residents (retail service or check meters) unless impractical, not financially feasible or not permissible under State/local law.

65 percent of public housing units were built before 1970, i.e., a period of less energy-efficient building technologies. Approximately 47 percent of public housing units are located in the nation's second coldest climate zone.



The diagram below shows the main sources of energy consumption for a typical household. Space heating is the largest source of energy consumption, followed by water heating and space cooling, making them often the target of energy conservation measures.



OPERATING FUND PROJECT UTILITY FUNDING (PHA-PAID UTILITIES)

Operating Fund formula funds utilities.

Essentially, each project is assigned a Utility Expense Level, or UEL. The UEL represents the amount that a project is provided, under the Operating Fund Formula, to spend on utilities (subject to Congressional appropriations).

The formula is based on the following:

- Four-year consumption average times past year's rate times HUD inflation factor

If the project consumes less than the historic average, it will benefit. If it consumes more, it will need to find other ways to pay for that difference.

The UEL formula has built-in “consumption incentive”:

- If consumption in the most recent year is less than the three-year average, the project retains 75 percent of the difference (or pays for 75 percent of the increase in consumption).

BETTER UNDERSTANDING THE PROJECT'S UTILITY COSTS

- Compare your consumption/costs with prior periods (historical)
- Compare your consumption/costs with other projects in the PHA
- Compare your consumption/costs with other PH projects (e.g., benchmarking)
- Compare your consumption/costs with other external benchmarks

Benchmarking example:

The Williamstown Housing Authority is internally benchmarking utility costs from its two projects, Elmhurst and The Terraces, both mixed population projects of mostly one-bedroom units. Elmhurst has 182 units and The Terraces has 145 units. All utility costs are paid by the PHA; there are no tenant paid utilities. Benchmarking is done in PUM figures.

	Elmhurst ($)	The Terraces ($)
Water	27.01	16.8
Electricity	48.97	34.75
Gas	41.23	0.00
Fuel	0.00	36.88
Sewer	18.00	11.20
TOTAL	135.21	99.63

NMAreferences.com website

HUD provides some benchmarking tools, including a water benchmarking tool, at:

- https://www.hud.gov/sites/documents/DOC_26031.xls

Energy Audits

All PHAs are required to complete an energy audit for each project every five years.

The energy audit should include:

- A detailed examination of how the property uses energy.
- What the project pays for energy.
- A technical analysis of the building and associated systems.
- Recommendations for energy conservation measures, with costs and payback.
- Ties output into Physical Needs Assessment (PNA)

Recommended Pre-Audit Activities

Prior to an energy audit, PHAs must gather information that the auditor will need to conduct the audit.

Review of utility bills (minimum of 12 consecutive months)

- The energy bills for the 12 months or more preceding the audit must be available for the auditor to use in evaluating consumption levels, patterns of energy use and the cost of energy.

Conduct project walk-through, using either:

- Form HUD 9614 or "Walk-through" survey from Chapter 4 of Energy Conservation Workbook

If the PHA wants more information, refer to the form HUD 9614 "HUD Multifamily Energy Assessment" on the Public Housing Environmental and Conservation Clearinghouse website at:

NMAreferences.com website.

- http://www.hud.gov/offices/pih/programs/ph/phecc/

In 1998, HUD developed an Energy Conservation Workbook. The information in the workbook is still helpful.

ENERGY CONSERVATION MEASURE (ECM)

What do typical Energy Conservation Measures (ECM) target?

- Appliances
- Water (toilets and other low flow fixtures)
- Lighting
- Domestic hot water and related controls
- HVAC systems and related controls
- Windows
- Fuel switching
- CHP (Combined Heat & Power, or cogeneration)

PAYBACK EXAMPLE

Essentially, how long will it take to pay back a particular capital investment with reduced energy costs? The shorter the payback period, the more cost-effective the measure.

An energy audit of Hilldale City PHA identified the following ECMs. The PHA needs to consider which items are most likely to be funded through operating receipts, Capital Funds, or an energy performance contract (EPC).

Item	Cost ($)	Annual Savings ($)
Roofs	100,000	1,000
Boilers	200,000	20,000
Filters	200	50

RESOURCES/LINKS

Energy Conservation for Housing – A Workbook, HUD, September 1998. Pages 7-9 through 7-12 address energy saving storm windows.

HUD Energy Efficient Rehab Advisor. Discusses selection of windows, skylights, and doors.

Selecting New Energy-Efficient Windows. Part of the U.S. Department of Energy's Consumer's Guide.

Improving Energy Efficiency in Apartment Buildings, American Council for an Energy-Efficient Economy, 1995. ISBN 0-918249-23-6. Pages 90 through 95 address window energy efficiency.

ENERGY STAR® Windows. A partnership between the U.S. Department of Energy and manufacturers of windows, doors, and skylights. Addresses energy-efficient windows, applications, and more.

Efficient Windows Collaborative. Addresses windows and efficiency, including fact sheets to help select windows by location.

Selecting Windows for Energy Efficiency. A more detailed Lawrence Berkeley Laboratory publication that discusses energy-related characteristics of windows, energy performance ratings, selection guidelines.

National Fenestration Rating Council. Provides consistent ratings on window, door and skylight products.

Learning Activity 4-1: Thinking it Through

As indicated from Pine Street's market survey, Pine Street is located in a low-income (but not impoverished) neighborhood. The units are small (square footage) and don't have air conditioning. Pine Street maintains an occupancy rate of 99 percent and is relatively good condition. There is a lack of affordable housing in the jurisdiction. It is not economically feasible to change the configuration of the units.

1. In their present condition, 2-bedroom units at Pine Street could rent for $500. With repairs, the units could command $525. With upgrades, rents could increase to $560. What does the relationship of these numbers imply?

2. As an income producing asset, Pine Street is currently valued at $1.2 million ($8,000/unit). In contrast, the as-is land value is $900,000. What is the significance of these two numbers? How important is market value to this project?

Section 9 Chapter 4 Post-Test

1. Small PHAs (with fewer than 250 public housing units) will be required to submit a physical needs assessment (PNA):
   a. Beginning in 2014, when the Capital Fund final rule became effective
   b. After HUD notice in the *Federal Register*
   c. Up to PHA policy

2. HUD's intent with the Final Energy Audit rule (EA) when published is to set the standard that:
   a. Will meet state requirements
   b. Will be the new HUD minimum standard
   c. Will relax energy conservation standards
   d. All of the above

3. The new Green Physical Needs Assessment Tool uses a cost projection timeline of:
   a. 1 year
   b. 1 year with rolling 5 year
   c. 10 years
   d. 20 years

4. The term EUL stands for:
   a. Energy Utility Line
   b. Efficiency Utility Link
   c. Effective Useful Life
   d. Expected Unused Lines

5. Energy Star rated products are:
   a. The preferred products to be used
   b. The least energy efficient
   c. Typically more expensive
   d. Both a and c

6. The acronym ECM stands for:
   a. Electrical Conservation Measures
   b. Electrical Compliance Measures
   c. Energy Condition Methods
   d. Energy Conservation Measure

CHAPTER 5 Capital Fund Formula

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify the formula components of the Capital Fund
- Become familiar with the Capital Fund formula for reconfiguration
- Recognize the Demolition and Disposition Transitional Funding (DDTF) formula

Section 1 Introduction and Major Changes

Regulations for the Capital Fund formula are at Subpart D, 905.400.

HUD sends each PHA an email (based on the addresses in the PIC system) with a link to the Capital Fund website when the Annual Contributions Contract (ACC) Amendments are available on the website.

- HUD notifies each PHA of its grant amount.
- The CF ACC Amendment must be signed and returned to HUD before PHA has access to the grant amount
- PHAs are responsible for maintaining the correct contact information for the PHA including the correct email address in PIC.

The final rule:

- Allows PHAs to use the funding for any eligible Capital Fund activities, including modernization.
- Eliminates separate RHF grants with separate use and reporting requirements.
- Reduces eligibility from 10 years to five years to increase funding levels for PHAs generally.
- Clarifies payment of capital funds for units after reconfiguration
- Implements Demolition Disposition Transitional Funding (DDTF), which can be used more flexibly, to replace Replacement Housing Factor Grants (RHF)

Section 2 PHAS and CFP Funding

HUD uses the latest published PHAS designations to determine which PHAs will receive the high performer bonus for the formula calculation. PHAs can validate whether they are on the High Performer list that will be the basis for the formula calculation by reviewing the Capital Fund Calculation spreadsheet (MS-Excel), available at:

- http://portal.hud.gov/hudportal/documents/huddoc?id=cfp_highperformerlist.xls.
  - The spreadsheet lists PHAs that are designated as high performers (it lists the Housing Authority Code, the Housing Authority Name and the City/State of the housing authority).

A PHA designated as a high performer under the most recent PHAS score may receive a performance bonus that is:

- Three percent above its base formula amount in the first five years these awards are given; or
- Five percent above its base formula amount in future years in which the performance award is earned.

Condition: Subject to the condition that no non-high performing PHA will lose more than five percent of its base formula amount as a result of the distribution of funding.

Section 3 Capital Fund Formula

FORMULA FOR PHAS

24 CFR 905.400

The Capital Fund formula is a formula allocation based on relative needs. The CF formula measures the existing modernization needs and accrued needs of PHAs.

HUD allocates one-half of the available Capital Fund amount based on the relative existing modernization needs of PHAs and one-half of the available Capital Fund amount based on the accrued modernization needs of PHAs.

ESTIMATING EXISTING MODERNIZATION NEEDS

Using numbers from FFY 1999, estimates of the existing modernization needs for all PHAs (Except NYC and Chicago PHAs) is based on the following:

- Objective measurable data concerning the PHA, community, and project characteristics applied to each project:
  - The average number of bedrooms in the units in a project;
  - The total number of units in a project;
  - The proportion of units in a project in buildings completed in 1978 or earlier. In the case of acquired projects, HUD will use the DOFA unless the PHA provides HUD with the actual date of construction completion. When the PHA provides the actual date of construction completion, HUD will use that date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap;
  - The cost index of rehabilitating property in the area as of FFY1999;
  - Coefficients based on geographical location in the U.S.;

- The extent to which the units of a project were in a nonmetropolitan area.
  - *Newly constructed units.* Units with a DOFA date of October 1, 1991, or after, are considered to have a zero existing modernization need.
  - *Acquired projects.* Projects acquired by a PHA with a DOFA date of October 1, 1991, or after, are considered to have a zero existing modernization need.

FREEZING OF THE DETERMINATION OF EXISTING MODERNIZATION NEED

FFY 2008 was the last fiscal year that HUD calculated existing modernization needs.

- The existing modernization need was frozen for all developments at the calculation as of FFY 2008 and will be adjusted for changes in the inventory and regulations for PHAs with fewer than 250 units in FFY 1999.

CALCULATING THE ALLOCATION FOR ACCRUAL NEEDS UNDER THE CF FORMULA

HUD will allocate the other half of the remaining Capital Fund amount based on the relative accrual needs of PHAs, determined by:

- *PHAs with 250 or more units* (except NYC and Chicago PHAs) formula is based on objective measurable data concerning the PHA, community, and project characteristics applied to each project:
  - Average number of bedrooms in the units in a project;
  - The extent to which the buildings in a project average fewer than 5 units;
  - The age of a project, as determined by the DOFA date;
  - Whether the development is a family project;
  - The cost index of rehabilitating property in the area;
  - Extent to which the units of a project were in a non metropolitan area;
  - PHA size of 6,600 or more units in FFY 1999;
  - Geographic coefficients (Midwest, South, etc.); and
  - An equation constant of 1371.9.
- *PHAs with fewer than 250 units*. Estimates of the accrual need is based on the PHA, community, and project characteristics applied to each project:
  - Average number of bedrooms in the units in a project;
  - The extent to which the buildings in a project average fewer than 5 units;
  - The age of a project, as determined by the DOFA date;
  - Whether the development is a family project;
  - The cost index of rehabilitating property in the area;
  - Extent to which the units of a project were in a nonmetropolitan area;
  - Geographic coefficients (Midwest, South, etc.); and
  - An equation constant of 3193.6.

Reduction of Units

For a project losing units as a result of demolition and disposition, the number of units on which the CF formula is based is the number of units reported as eligible for capital funds as of the reporting date.

- Units are eligible for funding until they are removed due to demolition and disposition in accordance with the schedule approved by HUD.

Total Accrual Need

Total accrual need under the CF formula is determined by project first. Multiply the PHA's total number of formula units in a project by its estimated accrual need per unit (using the coefficients described). Then calculate the sum total of each project's accrual need.

PHA's Formula Share of Existing Modernization Need

The PHA's share is the PHA's total estimated existing modernization need as determined in FFY 2008 divided by the total existing modernization need of all PHAs.

Note: This estimate was "frozen" for all PHAs in FFY 2008.

PHA's Formula Share of Accrual Need

This is an individual PHA's total estimated accrual need divided by the total existing accrual need of all PHAs.

PHA's Formula Share of Capital Need

A PHA's formula share of capital need under the CF formula is the average of the PHA's share of existing modernization need and its share of accrual need (each share is weighted 50 percent).

CAPITAL FUND FORMULA CAPPING

For units that are eligible for funding under the CF formula (including replacement housing units), a PHA's CF formula share is its share of capital need, as determined under the CF formula, subject to the condition that no PHA's CF formula share for units funded can be less than 94 percent of its formula share had the FFY 1999 formula system been applied to these CF formula-eligible units.

- The FFY 1999 formula system is based upon the FFY 1999 Comp Grant formula system for PHAs with 250 or more units in FFY 1999 and upon the FFY 1999 CIAP formula system for PHAs with fewer than 250 units in FFY 1999.

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

Section 4 Capital Fund Formula - Reconfiguration, RHF and DDTF

Reconfiguration of Units

24 CFR 905.400

Reconfiguration (conversion of units) causes the PHA's formula share to be calculated based on the count of existing units *after* the reconfiguration.

The purpose of this provision is to clarify HUD's policy as it has consistently been implemented.

It was never the intent of the formula calculation to fund the modernization needs or administrative costs of units that no longer exist as a result of conversion.

Replacement Housing Factor (RHF)

24 CFR 905.400

Established in FFY 2000, RHF provides up to 10 years of funding for units removed from a PHA's inventory due to demolition or disposition prior to September 30, 2013.

- This consists of two five-year increments of funding

Calculation:

- Capital Fund formula share without the reduction of units due to demo/dispo, less Capital Fund Formula share with the reduction of units due to demo/dispo.

RHF funding is awarded annually as a separate grant in addition to the Capital Fund formula grant

- RHF grants can only be used to fund replacement housing in accordance with the PHA's HUD-approved CF 5-Year Action Plan

RHF Accumulation

Up to five consecutive years of first or second increment RHF funding can be accumulated with a HUD-approved RHF Plan.

A PHA cannot accumulate funding from the first increment with funding from the second increment.

RHF Eligibility

PHAs that remove units on or before June 30 of the previous FY are reviewed for RHF eligibility.

- PHAs receive RHF funding for eligible units for up to five years of first increment.
- After the fifth year of first increment funding, PHAs can receive an additional five years of funding for eligible units as second increment RHF grants, if the planning, leveraging, obligation, and expenditure requirements are met.

Obligation and Expenditure Requirements

RHF grants must be 90 percent obligated within 24 months and expended within 48 months from the date the funds become available if there is no accumulation.

- Accumulated grants all have the same obligation end date.
- The obligation end date can be set as late as 120 days plus 24 months after the funds became available for formula grants for the last year RHF is being accumulated.
- RHF grants must be expended within 48 months from the date the funds become available if there is no accumulation.
- Expenditure dates can be set as late as 120 days plus 48 months for accumulated grants.
- If RHF funds are not obligated or expended within the established timeframes, the unobligated or unexpended balance will be recaptured.

PHAs submit monthly reports in LOCCS for the RHF grant.

DEMOLITION AND DISPOSITION TRANSITIONAL FUNDING (DDTF)

24 CFR 905.400

Demolition and Disposition Transitional Funding (DDTF) provides five years of funding for units removed from a PHA's inventory due to demolition or disposition on or after October 1, 2013.

PHAs that remove units due to demo/dispo are automatically eligible unless they reject the funding in writing.

If the PHA has received funding for units that will replace the lost units through another program (e.g., Choice Neighborhoods or HOPE VI), it is not eligible for DDTF.

- Public housing units receiving operating or capital funds are not eligible to receive HOME funds.

The funding will be included in the PHA's annual Capital Fund Formula Grant (not given as a separate grant).

- As a result, PHAs will be unable to accumulate grants.
- Accumulation is no longer necessary as a result of the expansion of eligible activities.

The PHA may use the funding for any eligible activities under the Capital Fund Program (905.200).

The funding must be obligated and expended in accordance with the requirements of the Capital Fund formula grant in which the funding has been included.

- 24 months to obligate 90 percent
- 48 months to expend 100 percent

Leveraging is still required for RHF. However, HUD's Office of Capital Improvements will be issuing forthcoming guidance on leveraging and other issues related to DDTF.

CF Formula RHF vs DDTF - Major Changes

Changes	RHF	DDTF
Accumulation	Yes	No, follows same obligation and expenditure requirements as Capital Fund formula grants
Eligible Activities	Development of replacement units	Modernization or development (including homeownership)
Funding Delivery	In a separate RHF grant each FY	Included in the PHA's annual Capital Fund grant
Years of Funding	Up to 10	5

RHF Transition

PHAs that removed units from inventory on or after July 1, 2013 will receive five years of DDTF and will not receive any RHF funding for those units.

PHAs that received years 1-4 of first increment RHF funds in FY 2013 will receive RHF grants for the remaining years of the first increment grants.

- If eligible for a second increment of RHF funding at the end of the first increment, the PHA will receive five years of DDTF funding, in lieu of the second increment of RHF.

PHAs that received years 6-9 of a Second Increment RHF Grant in FY 2013 will receive the remaining years of the Second Increment Grants.

SUMMARY OF RHF TRANSITION

		RHF to DDTF Transition by FY								
		FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
In FY 2014 what year of funding (out of 10 years) is the PHA receiving?	Year 1	Year 1 of DDTF	Year 2 of DDTF	Year 3 of DDTF	Year 4 of DDTF	Year 5 of DDTF				
	Year 2	Year 2 of 1st Incr RHF	Year 3 of 1st Incr RHF	Year 4 of 1st Incr RHF	Year 5 of 1st Incr RHF	DDTF (to replace Year 1 of 2nd Incr RHF)	DDTF (to replace Year 2 of 2nd Incr RHF)	DDTF (to replace Year 3 of 2nd Incr RHF)	DDTF (to replace Year 4 of 2nd Incr RHF)	DDTF (to replace Year 5 of 2nd Incr RHF)
	Year 3	Year 3 of 1st Incr RHF	Year 4 of 1st Incr RHF	Year 5 of 1st Incr RHF	DDTF (to replace Year 1 of 2nd Incr RHF)	DDTF (to replace Year 2 of 2nd Incr RHF)	DDTF (to replace Year 3 of 2nd Incr RHF)	DDTF (to replace Year 4 of 2nd Incr RHF)	DDTF (to replace Year 5 of 2nd Incr RHF)	
	Year 4	Year 4 of 1st Incr RHF	Year 5 of 1st Incr RHF	DDTF (to replace Year 1 of 2nd Incr RHF)	DDTF (to replace Year 2 of 2nd Incr RHF)	DDTF (to replace Year 3 of 2nd Incr RHF)	DDTF (to replace Year 4 of 2nd Incr RHF)	DDTF (to replace Year 5 of 2nd Incr RHF)		
	Year 5	Year 5 of 1st Incr RHF	DDTF (to replace Year 1 of 2nd Incr RHF)	DDTF (to replace Year 2 of 2nd Incr RHF)	DDTF (to replace Year 3 of 2nd Incr RHF)	DDTF (to replace Year 4 of 2nd Incr RHF)	DDTF (to replace year 5 of 2nd Incr RHF)			
	Year 6	DDTF (to replace Year 1 of 2nd Incr RHF)	DDTF (to replace Year 2 of 2nd Incr RHF)	DDTF (to replace Year 3 of 2nd Incr RHF)	DDTF (to replace Year 4 of 2nd Incr RHF)	DDTF (to replace Year 5 of 2nd Incr RHF)				
	Year 7	Year 2 of 2nd Incr RHF	Year 3 of 2nd Incr RHF	Year 4 of 2nd Incr RHF	Year 5 of 2nd Incr RHF					
	Year 8	Year 3 of 2nd Incr RHF	Year 4 of 2nd Incr RHF	Year 5 of 2nd Incr RHF						
	Year 9	Year 4 of 2nd Incr RHF	Year 5 of 2nd Incr RHF							
	Year 10	Year 5 of 2nd Incr RHF								

RHF Transition for MTW Agencies

All of the information regarding the transition to DDTF specified above also applies to MTW agencies.

However, in a letter sent to PHAs dated February 11, 2014, HUD also included the following MTW-specific information to clarify and ease the transition for these agencies, particularly as it relates to RHF amendment applicability:

- MTW agencies with RHF amendments in place may continue to abide by the terms set forth in their respective amendments if you have a current first or second increment RHF grant.
- Upon receipt of DDTF funding by an MTW agency, the RHF amendment will cease to be necessary, because DDTF will take the form of capital funds.
    - MTWs may use their single-fund budget flexibility to use DDTF for Section 8 and 9 expenditures
    - MTWs with Uses of Funds flexibility can apply DDTF towards an approved local, non-traditional activity

Section 5 HUD Chart of Accounts

The HUD chart of accounts is designed to allow PHAs to report to HUD in a prescribed format. The basic HUD account structure for assets, liabilities and equity, and the income and expense structure can be altered by a PHA to accommodate project and COCC financial reporting.

PHAs are free to design an account structure that works best for their business environment. However, keeping the structure in line with HUD's structure will facilitate reporting and auditing.

A sample HUD chart of accounts using the updated July 2020 2012 *Financial Data Schedule Line Definition Guide* is on the following pages.

SAMPLE HUD CHART OF ACCOUNT: BALANCE SHEET

BALANCE SHEET	
LINE #	**ACCOUNT TITLE**
	Assets
111	Cash - Unrestricted
112	Cash - restricted for modernization
113	Cash - other restricted
114	Cash - tenant security deposits
115	Cash - restricted for payment of current liability
100	**Total cash**
121	Accounts receivable - PHA projects
122	Accounts receivable - HUD other projects
124	Accounts receivable - other government
125	Accounts receivable - miscellaneous
126	Accounts receivable - tenants
126.1	Allowance for doubtful accounts - tenants
126.2	Allowance for doubtful accounts - other
127	Notes, loans, & mortgages receivable - current
128	Fraud Recovery
128.1	Allowance for doubtful accounts - fraud
129	Accrued interest receivable
120	**Total receivables, net of allowance for doubtful accounts**
131	Investments - unrestricted
132	Investments - restricted
135	Investments - restricted for payment of current liability
142	Prepaid expenses and other assets
143	Inventories
143.1	Allowance for obsolete inventories
144	Inter-program - due from
145	Assets held for sale
150	**Total current assets**
161	Land
162	Buildings
163	Furniture, equipment and machinery - dwellings
164	Furniture, equipment and machinery - administration
165	Leasehold Improvements
166	Accumulated Depreciation
167	Construction in progress
168	Infrastructure
160	**Total capital assets, net of accumulated depreciation**
171	Notes, loans, and mortgages receivable - non-current
172	Notes, loans, and mortgages receivable - non-current - past due
173	Grants receivable - non-current
174	Other assets
176	Investment in joint ventures
180	**Total non-current assets**
190	**Total assets**

BALANCE SHEET	
LINE #	**ACCOUNT TITLE**
311	Bank overdraft
312	Accounts payable </= 90 days
313	Accounts payable > 90 days
321	Accrued wage/payroll taxes payable
322	Accrued compensated absences - current portion
324	Accrued contingency liability
325	Accrued interest payable
331	Accounts payable - HUD PHA programs
332	Accounts payable - PHA projects
333	Accounts payable - other government
341	Tenant security deposits
342	Deferred revenues
343	Mortgage notes
344	Notes payable - operating
345	Other current liabilities
346	Accrued liabilities - other
347	Inter-program - due to
348	Loan liability - current
310	**Total current liabilities**
351	Mortgage notes payable - capital projects
352	Notes payable - operating
353	Non-current liabilities - other
354	Accrued compensated absences - non-current
355	Loan liability - non-current
356	FASB 5 liabilities
357	Accrued pension and OPEB liabilities
350	**Total non-current liabilities**
300	**Total liabilities**
508.3	Nonspendable Fund Balance (Modified Accrual Only FDS Line)
508.4	Net investment in capital assets
509.2	Fund Balance Reserved (Modified Accrual Only FDS Line)
509.3	Restricted Fund Balance (Modified Accrual Only FDS Line)
510.3	Committed Fund Balance (Modified Accrual Only FDS Line)
511.2	Unreserved, Designated Fund Balance (Modified Accrual Only FDS Line)
511.3	Assigned Fund Balance (Modified Accrual Only FDS Line)
511.4	Restricted net position
512.2	Unreserved, Undesignated Fund Balance (Modified Accrual Only FDS Line)
512.3	Unassigned Fund Balance (Modified Accrual Only FDS Line)
512.4	Unrestricted net position
513	**Total Equity - Net Assets/Position**
600	**Total Liabilities, Deferred Inflows of Resources and Equity - Net Assets/Position**

Sample HUD Chart of Account: Income Statement

INCOME STATEMENT	
LINE #	**ACCOUNT TITLE**
70300	Net tenant rental revenue
70400	Tenant revenue - other
70500	**Total tenant revenue**
70600	HUD PHA operating grants
70610	Capital grants
70710	Management fee
70720	Asset management fee
70730	Book-keeping fee
70740	Front line service fee (Fee-For-Services)
70750	Other fees
70700	**Total fee revenue**
70800	Other government grants
71100	Investment income - unrestricted
71200	Mortgage interest income
71300	Proceeds from disposition of assets held for sale
71310	Cost of sale of assets
71400	Fraud recovery
71500	Other revenue
71600	Gain or loss on sale of capital assets
72000	Investment income - restricted
70000	**Total revenue**
91100	Administrative salaries
91200	Auditing fees
91300	Management fee
91310	Book-keeping fee
91400	Advertising and marketing
91500	Employee benefit contributions - administrative
91600	Office expenses
91700	Legal expense
91800	Travel
91810	Allocated Overhead
91900	Other
91000	**Total operating - administrative**
92000	Asset management fee
92100	Tenant services - salaries
92200	Relocation costs
92300	Employee benefit contributions - tenant services
92400	Tenant services - other
92500	**Total tenant services**

INCOME STATEMENT	
LINE #	**ACCOUNT TITLE**
93100	Water
93200	Electricity
93300	Gas
93400	Fuel
93500	Labor
93600	Sewer
93700	Employee benefit contributions - utilities
93800	Other utilities expense
93000	**Total utilities**
94100	Ordinary maintenance and operations - labor
94200	Ordinary maintenance and operations - materials and other
94300	Ordinary maintenance and operations - contracts
94500	Employee benefit contributions - ordinary maintenance
94000	**Total maintenance and operations**
95100	Protective services - labor
95200	Protective services - other contract costs
95300	Protective services - other
95500	Employee benefit contributions - protective services
95000	**Total protective services**
96110	Property insurance
96120	Liability insurance
96130	Workmen's compensation
96140	All other insurance
96100	**Total insurance premiums**
96200	Other general expenses
96210	Compensated absences
96300	Payments in lieu of taxes
96400	Bad debt - tenant rents
96500	Bad debt - mortgages
96600	Bad debt - other
96800	Severance expense
96000	**Total other general expenses**
96710	Interest on mortgage (or bonds) payable
96720	Interest on notes payable (short and long term)
96730	Amortization of bond issue costs
96700	**Total Interest expense and amortization cost**
96900	**Total operating expenses**
97000	**Excess revenue over operating expenses**

INCOME STATEMENT	
LINE #	ACCOUNT TITLE
97100	Extraordinary maintenance
97200	Casualty losses - non-capitalized
97300	Housing assistance payments
97350	HAP Portability-In
97400	Depreciation expense
97500	Fraud losses
97600	Capital outlays - governmental funds (Modified Accrual Only FDS Line)
97700	Debt principal payment - governmental funds (Modified Accrual Only FDS Line)
97800	Dwelling units rent expense
90000	**Total expenses**
10010	Operating transfers in
10020	Operating transfers out
10030	Operating transfers from/to primary government
10040	Operating transfers from/to component unit
10050	Proceeds from notes, loans and bonds (Modified Accrual Only FDS Line)
10060	Proceeds from property sales (Modified Accrual Only FDS Line)
10070	Extraordinary items, net gain/loss
10080	Special items, net gain/loss
10091	Inter-project excess cash transfer in
10092	Inter-project excess cash transfer out
10093	Transfers between programs and projects in
10094	Transfers between programs and projects out
10100	**Total other financing sources (Uses)**
10000	**Excess (deficiency) of total revenue over (under) total expenses**
11020	Required annual debt principal payments
11030	Beginning equity
11040	Prior period adjustments, equity transfers, and correction of errors
11050	Changes in compensated absence balance (Modified Accrual Only FDS Line)
11060	Changes in contingent liability balance (Modified Accrual Only FDS Line)
11070	Changes in unrecognized pension transition liability (Modified Accrual Only FDS Line)
11080	Changes in special terms/severance benefits liability (Modified Accrual Only FDS Line)
11090	Changes in allowance for doubtful accounts - dwelling rents (Modified Accrual Only FDS Line)
11100	Changes in allowance for doubtful accounts - other (Modified Accrual Only FDS Line)
11170	Administrative fee equity
11180	Housing assistance payments equity
11190	Unit months available
11210	Number of unit months leased
11270	Excess cash
11610	Land purchases
11620	Building purchases
11630	Furniture & equipment - dwelling purchases
11640	Furniture & equipment - administrative purchases
11650	Leasehold improvements purchases
11660	Infrastructure purchases
13510	CFFP debt service payments
13901	Replacement housing factor funds

Learning Activity 5-1: Discussion

1. What demo/dispo strategies has your PHA done? What were some of the lessons learned?

2. Based on your local rental real estate market, the demand for different types of projects, the location of your projects, and their age and condition, what opportunities for demolition or disposition might your PHA explore?

3. Based on our discussion of reconfiguration, think about your properties, your local rental real estate market, and your occupancy rates. What opportunities for reconfiguration might your PHA explore?

Section 6 Chapter 5 Post-Test

1. Components (coefficients) of the Capital Fund formula include all of the following *except*:
   a. Number of units in the project
   b. Average number of bedrooms in the units
   c. Income level of residents in the project
   d. Geographic location
   e. Age of project

2. The final rule implements Demolition Disposition Transitional Funding (DDTF), which:
   a. Is a much more complicated process and set of rules than Replacement Housing Factor Grant (RHF)
   b. Can be used more flexibly, to replace Replacement Housing Factor Grant (RHF)
   c. Is only available to PHAs that are high performers under PHAS and SEMAP
   d. May not be used by Moving To Work (MTW) agencies
   e. All of the above

3. PHAs that removed units from inventory on or after October 1, 2013 will receive five years of DDTF and will not receive any RHF funding for those units
   a. True
   b. False

4. The PHA's elderly/disabled development, Harborside, had 152 units total, with 40 efficiencies (studios). The PHA reconfigured Harborside's efficiencies to one- and two-bedroom units. Now the PHA has 130 units in the building. The reconfiguration causes the PHA's Capital Fund formula share to be based on:
   a. The count of the original existing units, or 152
   b. The count of existing units after the reconfiguration, or 130
   c. The difference between the original units and the units after the reconfiguration, or 22
   d. Up to CFP 5-year action plan

5. The Capital Fund formula is a formula allocation based on relative modernization needs of PHAs.
   a. True
   b. False

CHAPTER 6 Development Requirements

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Understand the new rules for mixed-finance development
- Identify opportunities for development of public housing units
- Recognize the basic development process

Section 1 Introduction

The requirements and process for developing public housing are at Subpart F, 905.660.

- The old Subpart F or 24 CFR 941 is now deleted

Subpart F deals extensively with mixed-finance development. The objective of mixed-finance development is to restructure projects to make them feasible.

- The rule sets forth a process and conditions for HUD approval.
- Streamlines mixed-finance requirements
  - Requires submission of evidentiary documents for mixed finance projects at HUD's discretion
  - Eliminates the requirement for a separate waiver to use Identity of Interest approvals as part of the development process

This chapter presents a broad overview of the development requirements and process; for detailed information, see 905.660.

Section 2 General

The regulation applies to the development of public housing units to be included under an ACC and which will receive public housing funds.

PHAS may use any “generally acceptable” method of development, including:

- Conventional
- Turnkey
- Acquisition
- Force account
- Mixed-finance

PHAs must consult with affected residents and solicit their input with regard to any type of development of a public housing project prior to submission of a site acquisition proposal, development proposal, or both, to HUD. This consultation can be achieved through resident meetings as part of the annual plan or annual Capital Fund submission or by meetings convened specifically to discuss the development or acquisition.

Section 3 Background

All real estate assets go through a certain lifecycle or holding period. This lifecycle can be viewed in three distinct phases:

- The **first** is acquisition or development. This is when a project is acquired or built.
- **Next** is the project operations phase. Depending on the length of time in this phase, capital improvements may be made.
- **Finally**, at the end of the holding period, the project is repositioned, disposed of, or demolished.

One of the major tasks in private real estate asset management is determining the best time to reposition, sell, or refinance the project, based on the owner's goals.

Public housing is typically considered a permanent asset, although that is changing with mixed-finance activity on the rise. Consequently, the project operations phase is much longer than a purely private real estate asset.

Depending on their original design, the condition to which they have been maintained, and demographic and market factors, some properties might only need to be modernized after a long holding period while others require much more extensive "repositioning."

What types of asset strategies are available to a PHA?

One strategy is to **defer** capital needs. This is a legitimate strategy if funding is not readily available and the improvements are of a nature that they can be delayed. Given the large backlog of capital needs in public housing vis-à-vis annual appropriations for the Capital Fund, this strategy is actually the most common.

Another strategy is to make the **repair or replacement**. Few public housing projects need to be sold or disposed. Most can continue to be used for their current purpose, provided they are repaired, commonly through the Capital Fund. However, PHAs are getting more creative about alternative funding sources, e.g., the Capital Fund Financing Program.

A third strategy is to **reposition** the asset, which might mean redesigning it and/or converting it into mixed-finance housing.

A fourth option is to **sell, dispose, or demolish** the project. Such a decision may be made when there is no feasible financing strategy. Such a decision may also be made because the value of the asset is such that the PHA could better use the proceeds to invest in other projects.

Each of the previous strategies must be compared against the agency's mission and goals to determine the most appropriate asset plan. The key is to make a conscious decision about each project, even if the strategy is to defer repairs.

A PHA's mission may vary in terms of:

- **Who to serve:** Although all admissions to public housing must be low-income, and while at least 40 percent of a PHA's admissions must be below 30 percent of area median income (extremely low), beyond those requirements, PHAs may vary the process by which residents are determined to be eligible for public housing residence. Some PHAs choose to serve the most needy, others prefer a mix of low-income.
- **Quality of housing:** Some PHAs may decide that adequate housing is sufficient; others may desire a higher quality housing unit.
- **Standard of affordability:** Although PHAs possess less flexibility in setting rent levels than other multifamily properties, PHAs do have some options for establishing minimum rents. Flat rents are no less than 80 percent of the fair market rent (FMR), 80 percent of the small area fair market rent (SAFMR), or 80 percent of the unadjusted rent. PHAs may establish permissible income deductions, but they are not reimbursed for this kind of deduction.
- **Social goals:** Some PHAs believe strongly that they should also provide social services in addition to basic housing; others believe that public housing should focus more on bricks and mortar.

One of the factors that distinguishes public housing asset management from more traditional real estate asset management is that the goals are not simply about maximizing return on investment. PHAs have a somewhat different bottom line, which is to provide housing opportunities for low-income families. Thus, while public housing will adopt more of the business practices associated with managing and overseeing its assets, the purpose is to use these instruments to expand and preserve affordable housing, not realize profits.

Section 4 Development Process

24 CFR 905.600(c)

The rule restates the general development process, using any method and any financing in a development process:

- The PHA identifies a site to be acquired or a public housing project to be developed or redeveloped. The PHA or its Partner and/or the Owner Entity prepares a site acquisition proposal.
- The Annual plan and 5-Year Plan(s) are revised or updated.
- As noted earlier, the PHA must consult with affected residents to solicit their input into development of the public housing project.
- After HUD approval of the site, HUD and the PHA execute the applicable ACC Amendment and record a Declaration of Trust or Declaration of Restrictive Covenants.
- Upon completion of the project, the PHA establishes the Date of Full Availability (DOFA) indicating the property is ready to be occupied.
- After the DOFA, the PHA submits a cost certificate to HUD attesting to the actual cost of the project that will be subject to audit.

Section 5 Capital Fund Financing Program (CFFP)

The CFFP allows PHAs to borrow from the private market by pledging future CFP funds to make debt service payments. The debt is reported on the project's financial data schedule.

- HUD will generally permit up to 33 percent of the current CF award to be used for debt service payment.
- General term for payments is 20 years.

All CFFP transactions must be HUD-approved.

CFFP financing is usually part of a mixed-financing package, when the PHA is not intending to convert to RAD.

When evaluating CFFP, the PHA needs to consider amount of loan costs.

Payments to the lender are paid directly by HUD from the CFP award.

CFFP loan payments do not affect PHAS subindicator debt service coverage under the Financial Condition (FASS) indicator.

Section 6 Funding Sources

24 CFR 905.600(d)

PHAs may use the following funding sources to develop public housing, subject to program requirements:

- Capital Funds (including DDTF)
- HOPE VI funds

24 CFR 92.231, HOME Final Rule, July 24, 2013

- HOME funds
  - HOME funds may not be used for public housing units that receive Capital Fund or Operating Fund assistance.
    - The only exception is when HOME funds are used to develop a unit that also receives HOPE VI funds for development, as long as no Capital Funds are used in the unit.
  - HOME funds may be used in a project that contains a mix of public housing and non-public housing units, as long as the HOME funds are not used in the public housing units.
- Community Development Block Grant funds (CDGB)
- Choice Neighborhoods funds
- Proceeds from the sale of units under a homeownership program
- Proceeds from the disposition of PHA-owned land or improvements
- Private financing used in accordance with 905.604
- Mixed-finance development resources
- Capital Fund Financing Program (CFFP) proceeds
- Proceeds resulting from an Operating Fund Financing Program (OFFP) approved by HUD
- Funds available from any other eligible sources

Section 7 Design and Construction

24 CFR 905.312

The PHA must meet the following design and construction standards, as applicable, for all development and modernization:

- Equipped to be consistent with the selected neighborhoods
- Meet contemporary standards of modest design, comfort, and livability
- Promote security
- Promote energy conservation
- Harmonize with the community

All development projects must be designed and constructed in compliance with:

- A national building code, such as those developed by the International Code Council or the National Fire Protection Association; and the IECC or ASHRAE, for multifamily high-rises (four stories or higher), or a successor energy code or standard adopted by HUD or other relevant authority
- Applicable state and local laws, codes, ordinances, and regulations
- Other federal requirements, including fire protection and safety standards and HUD minimum property standards
- Accessibility requirements as required by section 504 of the Rehabilitation Act; and, if applicable, the Fair Housing Act
- Occupancy of high-rise elevator structures by families with children
- A high-rise elevator structure shall not be provided for families with children regardless of density, unless the PHA demonstrates and HUD determines that there is no practical alternative

Section 8 Program Requirements

Develop Means Through New Construction and/or Acquisition

Each public housing project developed using capital funds must establish a restricted use covenant, either in the DOT or as a Declaration of Restrictive Covenants, to operate under the terms and conditions applicable to public housing for a 40-year period that begins on the date on which the project becomes available for occupancy, as determined by HUD.

"Faircloth Limit" on the Number of Units

A PHA cannot use capital funds or operating funds to develop public housing units in excess of the Faircloth limit (number of public housing units as of October 1999).

However, the Faircloth limit is adjusted:

- When a PHA removes units from, adds units to, or consolidates units in the Annual Contributions Contract (ACC)
- As part of other consolidations
- As part of Rental Assistance Demonstration (RAD) removals

PHAs will not be funded for those units that exceed the Faircloth limit, and are responsible for reviewing the Faircloth limits and notifying HUD if they believe their posted Faircloth limit is not accurate.

Existing PHA-Owned, Non-Public Housing Properties

Non-public housing properties that are owned by a PHA can be added to the PHA's public housing ACC by following the development procedures described in 24 CFR Part 905, Subpart F.

Sites to be developed must comply with site and neighborhood standards.

- Applies to sites to be newly acquired for a public housing project
- Applies to new construction and rehab
- Must be approved by the field office prior to development proposal approval

The cost of new construction of public housing units cannot exceed the cost of acquisition/rehab.

- PHAs must provide evidence, either:
  - A cost comparison of acquisition vs. construction; or
  - Documentation of insufficient existing housing

PHAs must comply with environmental regulations at 24 CFR part 58 or part 50.

- Field offices are responsible for all environmental approvals

Section 9 Mixed-Finance Requirements

24 CFR 905.604

The final rule streamlines mixed-finance requirements.

- For example, the rule eliminates the requirement for a separate waiver to use Identity of Interest approvals as part of the development process

DEFINITION OF *MIXED-FINANCE DEVELOPMENT*

Mixed-finance development refers to the development of public housing units (through new construction or acquisition, with or without rehabilitation) when the public housing units are owned by an entity other than a PHA. Mixed-finance projects most commonly contain a mix of unit types, including public housing, other affordable units and/or market rate or unrestricted units.

24 CFR 905.604(a)(3)
24 CFR 905.604(a)(4)

However, mixed-finance projects may be 100 percent public housing as long as the units are owned by an entity other than the PHA. If units will be owned by a PHA instrumentality or PHA affiliate, the project is considered mixed-finance. Development of public housing units which will be 100 percent owned by a PHA is not mixed-finance. This is called "conventional development." Field offices have responsibility for approving development proposals for conventional development. HUD Headquarters Office of Public Housing Investments (OPHI) has responsibility for mixed-finance projects.

FUNDING

Mixed-finance developments may include one or any combination of funds identified above. However, public housing funds committed to a mixed-finance project may only be used to pay for costs associated with the public housing units, including costs associated with demolition, site work, infrastructure, and common area improvements.

Pro-Rata Test

To ensure that public housing funds are being used to fund public housing costs, mixed-finance projects must pass the "pro-rata test," which requires that the proportion of public housing funds to total sources committed to a project must not exceed the proportion of public housing units compared to the total number of units contained in the project.

For example, if there are a total of 120 units in the project and 50 are public housing units, the public housing units are 42 percent of the total number of units in the project. Therefore, the amount of public housing funds committed to the project cannot exceed 42 percent of the total project budget, unless otherwise approved by the Secretary.

Design

Public housing units built as part of a mixed-finance project must be comparable in size, location, external appearance, and distribution to non-public housing units within the development.

24 CFR §905.604(a)(4)

A mixed-finance project that involves modernizing or rehabilitating existing public housing after transfer to an owner entity: (1) maintains the DOFA date that existed prior to modernization and (2) must be operated as public housing for the same time period as newly constructed public housing.

Other Information on Mixed Finance Projects

Field offices must work with PHAs to enter project data into PIC prior to proposal approval.

The rule incorporates definitions of instrumentalities and affiliates.

- Aligns with Notice PIH 2007-15
  - *Instrumentality* is an entity related to a PHA which is controlled by the PHA
  - *Affiliate* is an entity in which a PHA has an interest, but not the same control as an instrumentality.
- Public housing projects that are developed and owned by instrumentalities or affiliates are handled as mixed-finance.

Identity of interest, addressed in the rule, is when the owner of a mixed-finance project wants to serve as general contractor.

- Identify of interest issue now approved as part of the development proposal approval
- OGC and Assistant Secretary approval no longer needed
- PHA must still provide an independent cost estimate
  - The general contractor cost must be lower than the estimate.

Incorporates Operating Subsidy Only provisions of Notice PIH 2004-5.

- Projects that use no public housing funds for development and only receive operating subsidy

Provides provision for Capital Fund Only projects

- Project that use public housing funds for development, but receive no operating subsidy

The final rule provides regulations pursuant to section 35(h) of the Housing Act.

- PHAs may deviate from public housing requirements for mixed-finance projects where reductions in operating subsidy have negatively impacted project feasibility
  - Formerly known as "Transformation"
- 35(h) could not be implemented until regulations in the Rule were published

Rule sets forth a process and conditions for HUD approval:

- PHAs must prepare an Alternative Management Plan for HUD approval
- Plans must be reviewed and approved by HQ
- Plan updates must be approved yearly

Section 10 More Development Rules

The final rule sets forth requirements for the following:

24 CFR 905.606

- Development proposal must include:
  - Project description:
    - Proposed development methods (mixed-finance, new construction, acquisition, etc.)
    - Type of residents to occupy the project (such as family, elderly and disabled, elderly, etc.)
    - Number and type of unit (garden walk-up, etc.), with bedroom count broken out by public housing vs. nonpublic housing, if applicable
    - Type and size of non dwelling space, if applicable
    - Schematic drawings of the proposed buildings
  - Site information:
    - An identification and description of the proposed site and neighborhood, a site plan, and a map of the neighborhood
  - Participant description:
    - Identification of participating parties and a description of the activities to be undertaken by each of the participating parties and the PHA; and the legal and business relationships between the PHA and each of the participating parties
  - Development project schedule:
    - A schedule for the development project that includes each major stage of development
  - Accessibility:
    - PHA must provide sufficient information for HUD to determine that dwelling units and other public housing facilities meet accessibility requirements

- Project costs:
  - Budgets
  - TDC calculations
  - Financing, including:
    - Commitment of funds
    - Irrevocability of funds
    - Third-party documents
    - Opinion of counsel
  - Operating pro-forma/Operating Fund methodology
  - Local cooperation agreement
  - Environmental requirements
  - Market analysis
  - Program income and fees
  - Additional HUD-requested information 24 CFR 905.608
  - Site acquisition proposal

24 CFR 905.610

- Technical processing
  - Safe harbor standards. For mixed- finance projects, in order to expedite the mixed-finance review process and control costs, HUD may make available safe harbor and maximum fee ranges for a number of costs. If a project is at or below a safe harbor standard, no further review will be required by HUD

24 CFR 905.610

- Disbursement of capital funds – predevelopment costs

Section 11 Design and Construction Costs and Other Limitations

ELIGIBLE ADMINISTRATIVE COSTS

24 CFR 905.314

Where the physical or management improvement costs will benefit programs other than public housing, such as the Housing Choice Voucher program or local revitalization programs, eligible administrative costs are limited to the amount directly attributable to the public housing program.

MAXIMUM PROJECT COST

The maximum project cost represents the total amount of public housing capital assistance used in connection with the development of a public housing project and includes:

- Project costs that are subject to the TDC limit; and
- Project costs that are not subject to the TDC limit (i.e., additional project costs). The total project cost to be funded with capital funds, in the PHA's proposal and as approved by HUD, becomes the maximum project cost stated in the ACC Amendment. Upon completion of the project, the actual project cost is determined based upon the amount of capital assistance expended for the project, and this becomes the maximum project cost for purposes of the ACC amendment.

TDC LIMIT

Public housing funds, including capital funds, may not be used to pay for housing construction costs and community renewal costs in excess of the TDC limit with the exception in the following paragraph.

Total Development Cost (TDC) Limit Exception for Energy Conservation and Efficiency

The rule allows PHAs to request a total development cost exception for integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency.

HUD will examine the request for TDC exceptions to ensure that they would be cost-effective, so as to ensure that up-front expenditures subject to the exceptions would be justified by future cost savings.

Determination of TDC Limit

HUD will determine the TDC limit for a public housing project as follows:

- **Step 1: Unit construction cost.** HUD will first determine the applicable "construction cost guideline" by averaging the current construction costs as listed in two nationally recognized residential construction costs indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use are the R.S. Means cost index for construction of "average" quality and the Marshall & Swift cost index for construction of "good" quality.
  - HUD has the discretion to change the cost indices to others that reflect comparable housing construction quality through a notice published in the *Federal Register*.
- **Step 2: Bedroom size and structure types.** The construction cost guideline is then multiplied by the number of units for each bedroom size and structure type.
- **Step 3: Elevator and nonelevator type structures.** HUD will then multiply the resulting amounts from step 2 by 1.6 for elevator type structures and by 1.75 for nonelevator type structures.
- **Step 4: TDC limit.** The TDC limit for a project is calculated by adding the resulting amounts from step 3 for all the public housing units in the project.

Funds Not Limited to the TDC Limit

A PHA may use funding sources not subject to the TDC limit (e.g., Community Development Block Grant (CDBG) funds, low-income housing tax credits, private donations, private financing, etc.) to cover additional project costs that exceed the TDC limit or the HCC limit. Such funds, however, may not be used for items that would result in substantially increased operating, maintenance, or replacement costs, and must meet the requirements of HUD's Reform Act of 1989.

These funds must be included in the project development cost budget.

Housing Construction Costs (HCC)

A PHA may not use capital funds to pay for HCC in excess of the amount determined in this section.

Determination of HCC limit

HUD will determine the HCC limit as listed in at least two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types (same as above for TDC).

The resulting construction cost guideline is then multiplied by the number of public housing units in the project, based upon bedroom size and structure type. The HCC limit for a project is calculated by adding the resulting amounts for all public housing units in the project.

The HCC limit is not applicable to the acquisition of existing housing, whether or not such housing will be rehabilitated. The TDC limit is applicable to such acquisition.

Community Renewal Costs

Capital funds may be used to pay for community renewal costs in an amount equivalent to the difference between the HCC paid for with public housing capital assistance and the TDC limit.

Rehabilitation of Existing Public Housing Projects

The HCC limit is not applicable to the rehabilitation of existing public housing projects. The TDC limit for modernization of existing public housing is 90 percent of the TDC limit. This limitation does not apply to the rehabilitation of any property acquired.

Modernization Cost Limits

If the modernization costs are more than 90 percent of the TDC, then the project shall not be modernized. Capital funds shall not be expended to modernize an existing public housing development that fails to meet the HUD definition of reasonable cost, except for:

- Emergency work
- Essential maintenance necessary to keep a public housing project habitable until the demolition or disposition application is approved
- The costs of maintaining the safety and security of a site that is undergoing demolition

Note: Reminder of definition of "reasonable costs": an amount to rehabilitate or modernize an existing structure that is not greater than 90 percent of the TDC for a new development of the same structure type, number, and size of units in the same market area. Reasonable costs are also determined with consideration of HUD regulations including 24 CFR part 85 [procurement] and 2 CFR part 224 [codifying OMB Circular A-87].

Development

For development work with Capital Fund and RHF grants, the administrative cost limit is three percent of the total project budget, or, with HUD's approval, up to six percent of the total project budget.

Learning Activity 6-1: You Got To Know When To Hold…

Consider one of your most difficult-to-occupy housing projects.

1. First, fill out the market survey below for this project. This type of market survey is a useful tool when comparing one of the PHA's projects to other affordable and market-rate rental real estate in your vicinity.

MARKET SURVEY:

Project Name:		**Date:**
Total Units:	**Year Built:**	**Date of Last Rehab:**

# Bedrooms	Number	# Baths	Sq. Footage	Flat Rent	# Accessible
0 BR					
1 BR					
2 BR					
3 BR					
4 BR					
5 BR					

Project Amenities/Activities	Yes	No	Unit Amenities	Yes	No
Gated			Microwave		
Security Entrance			Dishwasher		
Laundry Rooms			Garbage Disposal		
Recreation Room			Closet for each Bedroom		
Lobby			Closet Mirror Doors		
Playground			Fireplace		
Child Care			A/C Wall		
Gym			A/C Central		
Learning Center			Ceiling Fan		
Basketball Court			Patio/Yard		
Tennis Court			Fenced-in Yard		
Barbecue Area			Front or Back Porch		
Pets Allowed and Enforced			Balcony		
Self-Sufficiency Activities			Vertical Blinds		
Community Partners Participation			Washer/Dryer Hook-up		
Lease-up Incentives			Most Utilities Paid by PHA		

Parking	Yes	No
Gated		
Carport		
Garage		
Open Lot		
Assigned		

2. Next, survey the community. *Consider the 6-7 square blocks surrounding this project.*

Project Name:					
1=Bad **2=Not Good** **3=Neutral** **4=Pretty Good** **5=Excellent**					
	1	**2**	**3**	**4**	**5**
Poverty rate					
Racially/ethnically concentrated area of poverty (R/ECAP)					
Housing choice vouchers used extensively in neighborhood					
Other affordable housing opportunities					
Quality of market-rate rental real estate (owned and rented)					
Quality of schools					
Nearby employment and job opportunities					
Nearby community colleges/adult education centers					
Nearby Head Start and affordable child care					
Adequate public transportation					
Lack of industrial/environmental hazards					
Job/vocational training opportunities					
Resources/advocacy for persons with disabilities					
Resources/advocacy for elderly/persons					
Supermarkets/grocery stores/farmers markets					
Parks					
Clinics/hospitals					
Lack of nearby abandoned property					
Ongoing/upcoming public/private investment commitments					
ADD SCORE FROM ALL QUESTIONS:					

3. Based on the information in #1 and #2, if the decision were yours, what would be the long-range development plan for this project? You may choose two alternatives. Make notes to explain and justify your choice(s).

HOLD

MAJOR MODERNIZATION / REHAB

Jot brief notes: Will be explored more in next chapter.

RECONFIGURE

DEMOLITION – REBUILD – MIXED FINANCE

DISPOSE– SELL

OTHER

4. What if the modernization costs for your project are more than 90 percent of the TDC?

5. Before you make up your mind, what about community partnerships? Are there collaborations, services, resources or activities that would enhance the quality of your project?

Section 12 Notice PIH 2018-04 on Demolition or Disposition of Public Housing

SUMMARY

On March 22, 2018, HUD published Notice PIH 2018-04 to explain the application requirements to request HUD approval to demolish and/or dispose of public housing property, and related tenant project protection voucher (TPV) eligibility for such actions.

The notice is to be used in conjunction with HUD's implementing regulations at 24 CFR part 970 and related rules.

- The notice applies to all SAC applications, including those under review or already approved by HUD, if the PHA is requesting an amendment of HUD's approval.

SAC APPLICATION REQUIREMENTS

Notice PIH 2018-04 contains an overview of the requirements for applications for demolition and disposition as reviewed by HUD's Special Applications Center (SAC). Specifically, in accordance with 24 CFR part 970, the notice covers:

- How applications are processed
- PHA plan requirements
- Environmental requirements
- Resident consultation
- Offer of sale to resident organizations in cases of disposition
- Board resolution
- Phased applications
- Amendments

Disposition

The notice contains the permissible justifications for which HUD would approve SAC applications for dispositions. These include:

- Retention of units is not in the best interest of the residents or the PHA because the conditions in the area surrounding the project adversely affect the health or safety or residents or the feasible operation of the project by the PHA.
- Retention of units is not in the best interest of the residents or the PHA because disposition allows for the development of other properties that will be more efficiently or effectively operated as low-income housing developments.
- The PHA certifies that it has determined that the disposition is appropriate for reasons that are in the best interests of the residents and the PHA, consistent with the goals of the PHA and the PHA plan. This could have to do with units being obsolete, the PHA being very small, or conversion under the Rental Assistance Demonstration (RAD) program, among other reasons.

Further details regarding each of these justifications and other requirements related to disposition can be found in the notice.

Demolition

The notice contains the permissible justifications for which HUD would approve SAC applications for demolitions as well. These include:

- Substantial issues with regard to the physical condition of the property-such as critical structural issues or deficiencies in major systems-that can not be corrected in a cost-effective manner.
- Cases in which the location of the units causes issues, including physical deterioration of the neighborhood, change in neighborhood from residential to industrial or commercial, or environmental conditions that jeopardize residential use.
- Other factors that impact the marketability, usefulness, or management of the units that seriously impede operations for residential use. These must be supported by third-party documentation.

Once again, details regarding each of these justifications can be found in the notice.

Note: In any five-year period, a PHA may demolish the lesser of five dwelling units or five percent of the total public housing units without the need to obtain HUD approval, provided the resulting space is used to meet the service or other needs of the residents, or the PHA determines the units are beyond repair.

TPV Eligibility

Notice PIH 2018-04 discusses the eligibility and application process for tenant protection vouchers (TPVs). While a PHA may be eligible to receive TPVs to issue residents as a result of a demolition or conversion, the PHA issuance of TPVs does not automatically occur with SAC approval of an application. Instead, the PHA must apply separately in accordance with the current PIH funding notice for the HCV program. In other words, HUD determines a PHA's TPV award based on relevant appropriations and other HUD-issued guidance, including the current year's funding notice.

- According to Notice PIH 2018-04, HUD is limiting the maximum TPV awards for dispositions based on improved efficiency or effectiveness to 25 percent of the occupied units at the project.

Notice PIH 2018-04 covers the requirements for the TPV application process in detail.

Relocation and Other Requirements

Notice PIH 2018-04 also discusses other important applicable requirements relevant to demolition and disposition, including relocation of residents, civil rights requirements, reporting requirements, and requirements related to existing financial transactions, among others. For further information on demolition or disposition of public housing property, please see the notice in addition to the regulations at 24 CFR part 970.

Section 13 Chapter 6 Post-Test

1. The purpose of mixed-finance development is to:
   a. Tear down public housing
   b. Develop public housing units over the ACC
   c. Restructure projects to make them more feasible
   d. Fund the housing choice voucher program

2. The final rule drastically changes the general development process.
   a. True
   b. False

3. The final rule streamlines the mixed-finance requirements.
   a. True
   b. False

4. Which of the following is not considered mixed-finance?
   a. Development of public housing which will be owned in whole by an entity other than a PHA
   b. Development of public housing which will be 100 percent owned by the PHA
   c. Development of public housing which will be owned in part by an entity other than a PHA

5. PHAs may use the following funding sources to develop public housing, except:
   a. Capital funds
   b. Housing Choice Voucher administrative reserves
   c. Private financing
   d. Choice Neighborhood funds
   e. Proceeds from the sale of PHA-owned land

6. The life cycle of a public housing building is completely unlike that of other rental real estate.
   a. True
   b. False

7. PHAs may use any generally acceptable method of development, which includes:
   a. Conventional
   b. Acquisition
   c. Force account
   d. Mixed-finance
   e. All of the above

8. Mixed-finance developments must meet the "pro-rata" test, which means:
   a. The proportion of public housing units must not be more than the proportion of privately financed units
   b. The proportion of public housing units must not be less than the number of public housing units before the transition to mixed-finance
   c. The proportion of public housing funds must not be more than the proportion of public housing units

9. The cost of new construction of public housing units cannot exceed the cost of acquisition/rehab.
   a. True
   b. False

10. The final rule eliminates the requirement for PHAs to comply with environmental regulations when developing or acquiring housing.
   a. True
   b. False

11. Prior to submission of a development proposal, PHAs must:
   a. Obtain HUD Field Office approval
   b. Finalize the budget
   c. Prepare an Alternative Management Plan
   d. Consult with affected residents
   e. Break ground on the new project

12. All development projects must be designed and constructed in compliance with accessibility requirements under section 504 of the Rehabilitation Act; and, if applicable, the Fair Housing Act, except for mixed-finance developments owned in whole or in part by an entity other than the PHA.
    a. True
    b. False

13. One of the factors that distinguishes public housing asset management from more traditional real estate asset management is that the goals in public housing are not simply about maximizing return on investment.
    a. True
    b. False

14. A proposed demolition or disposition is not considered a significant amendment to the Capital Fund Action Plan.
    a. True
    b. False

CHAPTER 7 PHAS and the Capital Fund

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize the basics of the PHAS interim rule
- Understand the Capital Fund indicator components
- Understand how the Capital Fund indicator is scored
- Identify strategies for maximizing occupancy

Section 1 The PHAS Interim Rule

The Interim Rule, published in the *Federal Register* on February 23, 2011, became effective on March 25, 2011. This interim rule is titled *Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default.*

- A new Part 902 of the Code of Federal Regulations was established for the PHAS rule (24 CFR Part 902). The interim rule, removed 24 CFR Part 901, revised Part 902, and added Part 907, Substantial Default by a Public Housing Agency.
- HUD considerably streamlined the PHAS evaluation process by eliminating the resident satisfaction survey and the PHA management certification, and, in the interim rule, the management review as a scored element.
- The new regulations under the interim rule are applicable to PHAs beginning with the first fiscal year end date after the effective date of the rule (March 25, 2011) and thereafter.
- The new regulations result in:
  - Performance is assessed by project except for the Capital Fund which is assessed agency wide
  - Implementation of third party assessments
  - Eliminates the PHA's self certification

Capital Fund Indicator

The Capital Fund program indicator is required by statute to be measured at the PHA level.

The Capital Fund indicator has been revised to reflect actual performance rather than just statutory compliance. Five points will be provided for timely obligation, and five points will be provided if a PHA's adjusted occupancy rate is at least 96 percent.

Overall PHAS Scoring

Each PHA will receive an overall PHAS score, based on the four indicators:

• Physical condition	40 points
• Financial condition	25 points
• Management operations	25 points
• Capital Fund program	10 points

Individual project (AMP) scores are used to determine a single score for the physical condition, financial condition, and management operations indicators. The Capital Fund program indicator score is entity-wide.

The PHAS score will be issued by PIH-REAC for each PHA one month after the PHA submits its year-end financial data.

Section 2 Capital Fund Indicator

Description and Purpose

The purpose of this indicator is to examine the period of time it takes a PHA to obligate Capital Fund program funds and to occupy units:

- To ensure that the PHA obligates 90 percent or more of its funds as quickly as possible, but no later than two years after funds become available.
- To modernize/develop public housing units and improve overall occupancy.

Funds from the Capital Fund program under this section do not include HOPE VI program funds.

This does not apply to PHAs that choose not to participate in the Capital Fund program of the 1937 Act.

This indicator applies on a PHA-wide basis and not to individual projects.

Subindicators

The two subindicators of the Capital Fund program indicator are:

- Timeliness of fund obligation
- The PHA's occupancy rate

Subindicator #1: Timeliness of Fund Obligation

The first subindicator examines the period of time it takes for a PHA to obligate funds from the Capital Fund program under the 1937 Housing Act.

The timeline for obligation of funds is statutory in the 1937 Act.

- HUD may extend the period of time for the obligation of funds in accordance with the 1937 Act.

Capital Fund Financing Program (CFFP) amounts are treated as “obligated” upon approval and closing of the financing.

Subindicator #2: Occupancy Rate

The second subindicator measures the PHA's occupancy rate at the end of the PHA's fiscal year.

HUD believes that success in addressing capital needs will be reflected in higher occupancy rates.

- HUD stated in the interim rule that expenditure of capital funds is not necessarily a good measure of how well the funds are being used for capital expenditures, and thus the indicator now considers occupancy.

Occupancy rate is calculated by dividing the total occupied assisted, HUD-approved special use, and non-assisted units by the total ACC units less the total uninhabitable units as reflected in the Inventory Management System-PIC, or its successor.

- This information will be calculated as of the end of the PHA's fiscal year.

Capital Fund Performance Standards

Overview

Maximum 10 points

- Threshold score for this indicator must be at least five points, or 50 percent of maximum number of 10 points.
- A PHA that receives less than 50 percent, or five points, under the Capital Fund program indicator will be designated as a capital fund troubled performer.
- HUD awards Capital Fund program bonus funds according to the PHA's PHAS score. This procedure was not modified by the interim rule.

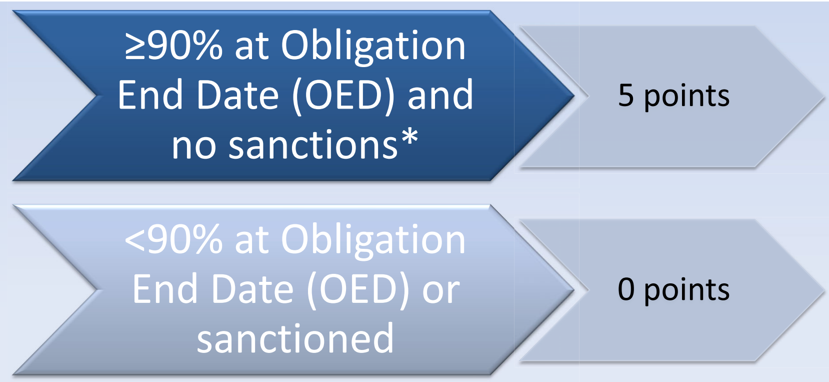
# Capital Fund	**10**	
Timeliness of Fund Obligation		5.0
Occupancy Rate		5.0

Timeliness of Fund Obligation

The PHA will earn the full five points if it has obligated 90 percent or more of the grant amount for all of its grants on its obligation end date, or on the extended obligation end date, for all open capital fund program grants that have obligation end dates during the assessed fiscal year and does not have any grants that have been sanctioned during the assessed fiscal year.

The PHA will earn zero points if it has obligated less than 90 percent of the grant amount for any of its open grants on the obligation end date during the assessed fiscal year or is undergoing sanctions per the interim rule.

If the PHA receives zero points for this subindicator, it is not eligible for points under subindicator two.



If a PHA has no obligation end dates in the assessed fiscal year, and does not have any 1937 Act 9(j) sanctions against it in that fiscal year, *the points for this sub indicator will be redistributed to the occupancy sub indicator.

Occupancy Rate

A PHA will receive five points if it has an adjusted occupancy rate of 96 percent or more.

The PHA will receive two points if it has an adjusted occupancy rate of at least 93 percent but less than 96 percent.

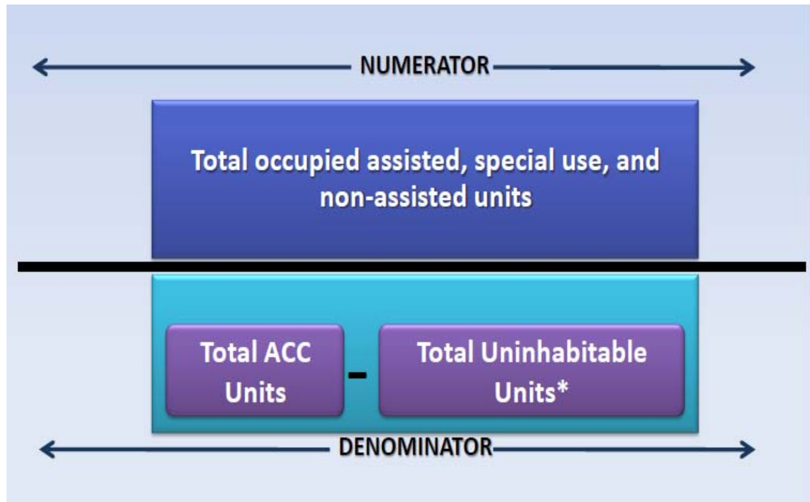
Again, occupancy rate is scored only if a PHA scores five points on the first subindicator.

Note: In June 2012, HUD published a notice in the *Federal Register* making a temporary change in the scoring of the Capital Fund indicator.

- HUD will award five points for the Occupancy subindicator to all PHAs for FYEs March 31, June 30, September 30, and December 31, 2011 to address the transition to the scoring system under the Capital Fund Occupancy Rate subindicator.
- The score already assigned to the Occupancy subindicator will be designated as an advisory score, but only for a period of one year from the date of publication of the *Federal Register* notice.

On December 16, 2013, HUD published in the *Federal Register* a notice extending the scoring adjustment for FYEs from March 31, 2014, through December 31, 2015. PHAs automatically received five points for the occupancy subindicator for those fiscal years.

Occupancy Rate Computation



As reflected in IMS-PIC

Elements of Scoring

Method of Assessment

Data used for scoring are obtained through:

- Analysis of obligated amounts in HUD's eLOCCS (or its successor) for all Capital Fund program grants that were open during the assessed fiscal year.
  - eLOCCS is HUD's electronic Line of Credit Control System
- IMS-PIC (or its successor) data as of the PHA's assessed FYE.

Scores are first calculated in each subindicator. From the two subindicator scores, an indicator score is then calculated.

Other aspects of the Capital Fund program will be monitored by HUD through other types of reviews.

Section 3 Summary of PHAS Indicators

Indicator Number	Indicator/Component Title	Points Possible
1	Physical Condition	40
2	Financial Condition	25
3	Management Operations	25
4	Capital Fund Program	10

Approximate Relative Weights/Points

Indicator/Sub-Indicator/Component	Indc. Pts.	Approx Pts.
#1 Physical Condition	40	
Site		6.0
Building Exterior		6.0
Building Systems		8.0
Dwelling Units		14.0
Common Areas		6.0
In addition, Health and Safety deficiencies will result in reductions to the total physical inspection score which takes into account the five areas, above, with their approximate relative weights/points		
#2 Financial Condition	25	
Quick Ratio (liquidity)		12.0
Months Expendable Net Assets Ratio (adequacy of reserves)		11.0
Debt Service Coverage Ratio		2.0
Flags:		
No audit opinion (minus 25 pts)		
Going concern opinion(*)		
Disclaimer of opinion (minus 25 pts)		
Material weakness/internal control(*)		
Adverse opinion (minus 25 pts)		
Qualified opinion(*)		
Reportable conditions(*)		
Findings of non-compliance and questioned costs(*)		
Indicator outlier analyses(*)		
(*) Points will be deducted to the extent points remain after initial scoring for the sub-indicator affected by the flag		

#3 Management Operations	25	
Occupancy		16.0
Tenant Accounts Receivable		5.0
Accounts Payable		4.0
#4 Capital Fund	10	
Timeliness of Fund Obligation		5.0
Occupancy Rate		5.0

Section 4 Project Reporting

EXAMPLES OF REPORTS USED FOR MONITORING PROJECT PERFORMANCE

Quality data for key program areas and functions will be reported, which will form a baseline against which a PHA can measure progress over time (trend analysis). The board should set benchmarks for acceptable performance.

The PHA needs to carefully select critical areas of performance to monitor success and identify any concerns in these critical areas.

These reports will be source documents for the PHAS on-site management review.

Following are examples of reports.

Project Performance Reports – June 2017 – Garden Glen (AMP 1)

1. Property Narrative

In June we hosted the annual graduation picnic. Mayor Walker attended.

Occupancy continues to improve and we hope to hit 98% next month. Rent collections reached 98% for the first time this month.
Two months ago, we started the use of a mini-model apartment to show vacant units (the kitchen and bathroom are decorated with attractive curtains, towels, and accessories). The mini-model gets moved to the longest-vacant unit.

2. Physical Occupancy

a Unit Type	*b* Total Units	*c* Occupied Units	*d* Capital Fund (Mod)	*e* Other Exemptions	*f* *(d + e) Total Exemptions*	*g* Vacant Units	*c/b %* Gross Occupancy	*c/(b-f)%* Adjusted Occupancy
0 brn								
1 brm	40	40				*0*	100%	100%
2 brm	120	116		2	2	4	96.7%	98.3%
3 brm	60	57				3	95.0%	95.0%
4 brm								
5 brm								
Total	***220***	***213***		***2***	***2***	***7***	***96.8%***	***97.7%***

3. Waiting List (particularly important with site-based waiting lists)

Unit Type	Number of Applications			
	Total	RRO1	PEO3	PEO1
1 brm	48	3	9	36
2 brm	72	9	20	43
3 brm	15	7	8	10
4 brm				
5 brm				

** RRO1 = application approved / ready to be housed / awaiting ready unit **
** PEO3 = passed credit and criminal check: pending other verification **
** PEO1 = application received **

4. Site-Based Waiting List Demographics (if applicable)

		Date of Site-Based 9-1-09	Assessed 10-10-16
Ethnicity	Hispanic or Latino	37%	38%
	Not Hispanic or Latino	63%	62%
Race	White	48%	47%
	Black/African American	38%	40%
	American Indian/Alaska Native	5%	5%
	Asian	8%	7%
	Native Hawaiian/Pacific Islander	1%	1%
Disability	Persons with Disabilities	2%	4%

5. Move-Ins, Move-Outs, and Unit Turnaround Time

	This Month	Year-to-Date
a. Move-ins this month	6	30
b. Move-outs this month	3	29
c. Evictions (included with move-outs)	0	2
d. Down time for units leased this month	3	30
e. Make-ready time for units leased this month	23	175
f. Lease-up time for units leased this month	25	138
g. Total turnaround days (d+e+f)	51	343
h. Average turnaround time (g/a)	8.5 days	11.4 days

6. List All Vacant Units and Their Status

Address	Bdrm	Vacated Date	Projected Ready Date (mm/dd/yy)	Anticipated Lease Date (mm/ dd /yy)	File Approved and Waiting?
415 Juniper #A	2	5/20/17	6/7/17	6/7/17	Yes
417 Juniper #C	2	5/20/17	6/7/17	6/7/17	Yes
413 Juniper #B	2	6/2/17	6/15/17	6/20/17	Yes
415 Juniper #B	3	6/16/17	6/30/17	6/30/17	Yes
415 Juniper #C	2	6/24/17	7/5/17	7/5/17	Yes
417 Juniper #D	3	6/30/17	7/8/17	7/8/17	No
411 Juniper #B	3	6/30/17	7/15/17	7/15/17	No

Continue on a separate sheet if necessary.

7. Customer Traffic

Walk-ins inquiring about the property	10
Telephone inquiry calls	17
Applications taken	25
Interest letters with brochures sent	20

9. Promotions and Advertising Narrative

New color postcard was printed last month, and it seems to be increasing customer calls and walk-ins. New pictures were added to the website.

10. Recertifications / Annual

Outstanding at start of month	7
Due to be completed this month	32
Completed for this month	37
Ending backlog	2

11. Annual Unit Inspections

Total units to be inspected for the year	220
Number completed: start of month	172
Number inspected for the month	30
Number completed: year to date	202
Total left to be inspected for the year	18

Have all building system inspections been completed	☑ YES ❒ NO
If yes, please enter date	6/12/17

12. Lease Enforcements This Month

Lease warnings issued	13
Lease violations issued	2
Abandonment letters	0
30-day lease terminations	3
72-hour lease terminations	2

13. Grievance Actions

List all applicants who requested informal hearing, and all tenants who requested/received hearings and who received informal settlements and hearings.

Applicant Informal Hearings

Applicant	Reason	Date Conducted	Decision
Georgina Mata	Denial for past evictions and tenancy	6/2/17	Upheld
Matt Sills	Denial for criminal history	6/10/17	Upheld

Continue on a separate sheet if necessary

Grievance Hearings

Tenant	Reason	Informal Settlement Conducted	Decision	Hearing Conducted	Decision
Josephine Crane	30-day notice for unauthorized person	6/8/17	Rescinded	No	Documentation presented at informal settlement
Elizabeth Mobutu	30-day notice for $452 damages	6/20/17	Rescinded per VAWA, repayment agreement	No	
Les Leguine	6/15/14, served 30-day notice for drug criminal activity	Bypass due process		Bypass due process	Court case pending
Guillermo Rojo	6/17/14, served 30-day notice for unauthorized person	6/22/17	Upheld	Scheduled 7/1/17	

14. Evictions This Month

List all tenants on formal eviction/court summons, then all households for whom a judgment was issued, the date of the judgment and the action (dismissal, eviction, etc.)

Resident Name	Reason (30-day/72-hour)	Summons Date	Judgment Action
Connie Calaveras	14-day nonpayment of rent	6/2/17	Upheld; lockout 6/30/17

Continue on a separate sheet if necessary.

15. Non-Emergency Work Orders

	This Month	Year-to-Date
a. Beginning balance from previous month(s)	8	34
b. Number of non-emergency work orders active – include work orders active from previous month(s)	107	950
c. Total number of calendar days to complete non-emergency work orders in *b* (above)	790	7,618
d. Number within b (above) generated by tenant	21	238
e. Total number of calendar days to complete tenant-generated work orders in *d* (above)	143	1,736
f. Average number of calendar days to complete non-emergency work orders *(c/b)*	7.4 days	11.7 days

16. Emergency Work Orders

	This Month	Year-to-Date
a. Total requested/issued	2	82
b. Completed/abated within 24 hours in *a* (above)	2	82
c. Percent completed within 24 hours (b/a)	100%	100%

17. Rent Collections

	This Month	Year-to-Date
a. Rent owed. Do not include damage charges, late fees, excess utility charges, legal fees, or retroactive rent charges.	32,737	348,799
b. Arrears, tenants in possession	1,257	4,820
c. Total charges (a + b)	33,994	353,619
d. Rent collected	32,154	341,620
e. Rent collection rate *(d/a)*	98.2%	97.9%

18. Aged Receivables – Other Amounts Owed by Tenants

Tenant	**Category Owed** (Include late charges, maintenance charges, security deposits owed, pet deposits owed, legal fees, excess utility charges)	Current (1-30 Days)	Over 30 Days	Over 60 Days	Over 90 Days

19. Delinquencies – Repayment Agreements

REPAYMENT AGREEMENTS	
Total number of households	4
Amount	$3,020
Number under up-to-date repayment agreements	3
Amount under up-to-date repayment agreements	$3,020
Number under legal (other than repayment agreements)	0
Amount under legal (other than repayment agreements)	0

20. Aged Payable Summary Report

	Current (1-30 Days)	Over 30 Days	Over 60 Days	Over 90 Days
Totals:				

21. Security Report

List number of security incidents at project by category. Property manager should attempt to obtain police incident reports where available. If possible, on a quarterly basis compare total project incidents with crime statistics in the community at large.

Type	Vandalism	B&E	Assault	Aggravated Assault	Robbery	Drug Related	Other	Total
Number of Incidents								

22. Fair Housing Report (Reasonable Accommodation Requests, FHEO Issues)

List all requests for reasonable accommodation, complaints about possible discrimination, and other FHEO issues received, pending, or finalized this month.

Unit	Request	Date Requested	Status
114	Request for live-in aide	6/18/17	Approved. Background check on live-in aide pending.
89	Request for transfer to balcony unit.	4/30/17	Denied 6/2/17 per 504 Coordinator. See Documentation. No verification provided That need for a balcony unit is related to Disability.
05	Request for grab bars		Approved. Installed 6/12/17.

Example Trend Analysis of Projects and Portfolio

Portfolio Analysis – Current Fiscal Year													
	Jan	**Feb**	**Mar**	**Apr**	**May**	**June**	**July**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**	**TOTAL YTD**
FASS													
MASS													
CAP FUND													
Occupancy	96%	96.4%	94.8%	96.3%	97.2%	98.1%	97.8%	98.1%	97.9%	97.4			97.2
Turnaround Time[1]	20	24	46	19	15	12	20	18	12	13			21 days
Rent Collection Rate	94%	94.8%	95.6%	97.8%	98.2%	98.1%	98.2%	97.9%	98.3%	98.2% .			97.3%
Emergency Work Orders[2]	100 %	100%	100%	100%	100%	100%	100%	100%	100%	100%			100%
Nonemergency Work Orders[3]	24	22	25	18	16	14	12	14	12	10			15 days
Recertifications[4]	95%	96%	96%	96%	97%	96%	98%	97%	97%	96%			97%

Portfolio Trend Analysis				
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019 YTD**
Overall PHAS Score	68	73	84	≈91
PASS	25	26	31	
FASS	18	19	21	23
MASS	15	18	22	24
CAP FUND	10	10	10	10
Occupancy	96.4%	94.8%	96.3%	97.2%
Turnaround Time[1]	24 days	46 days	19 days	15 days
Rent Collection Rate	94.8%	95.6%	96.8%	97.3%
Emergency Work Orders[2]	100%	100%	100%	100%
Nonemergency Work Orders[3]	227days	22 days	18 days	15 days
Recertifications[4]	96%	96%	96%	97%

Project Performance – Current Fiscal Year YTD						
	Juniper Gardens	**The Elms**	**Garden Glen**	**Daybreak**	**The Grove**	**TOTAL**
PASS						
FASS	25	24	20	23	24	**23**
MASS	25	25	18	24	24	**24**
Occupancy	98%	97.9%	94.8%	97.1%	97.2%	**97.2**
Turnaround Time[1]	12 days	8 days	24 days	12 days	13 days	**15 days**
Rent Collection Rate	98%	98.2%	94.6%	96.8%	97.9%	**97.3**
Emergency WOs[2]	100%	100%	100%	100%	100%	**100%**
Nonemergency WOs[3]	4 days	6 days	28 days	18 days	16 days	**15 days**
Recertifications[4]	98%	98%	94%	96%	97%	**97%**

[1] Average number of days between move-out and new lease-up. If turnaround time > 15 days, chart will indicate down time, make-ready time, and lease-up time

[2] Percentage of emergency work orders completed or abated within 24 hours

[3] Average number of days to complete nonemergency work orders

[4] Percentage completed by anniversary effective date

PERIODIC EVALUATION OF PROPERTIES

HUD intends to use the following template (still in revision at HUD) as a diagnostic and review tool. It is expected that this or a similar tool will be incorporated in the final PHAS rule for assessment and scoring.

The property manager and regional manager should ensure that a comprehensive management review is conducted on all properties at least annually. HUD's draft form 5834 is a template the PHA could adopt. Note, however, that any citations concerning 24 CFR Part 85 listed in the draft should be corrected to the updated regulations at 2 CFR Part 200.

Management Review for Public Housing Projects	**U.S. Department of Housing and Urban Development** Office of Public and Indian Housing	OMB Approval No. ____ Exp. _____

Public Reporting Burden for this collection is based on the size of the project and the level of compliance and is estimated to average .95 hours per respondent, and includes time required for public housing agencies to review and respond to information requests. The information is being collected for a management review of individual public housing projects and will be used to assess the management operations of projects under asset management. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), this agency may not collect this information and public housing agency program participants are not required to respond to this collection of information unless the collection displays a current valid OMB control number. OMB No. 2577-xxxx, expires xx/xx/xxxx.

PURPOSE: To assess management and oversight of public housing projects.

INSTRUCTIONS: This form is to be completed by HUD staff or contractors in accordance with the annual Management Plan, which will provide guidance regarding the portions of the form HUD-5834 that are required.

A. Conducting the On-Site Review
- Complete all applicable questions.
- Use additional sheets as necessary to complete applicable questions.
- Upon completion of the on-site review, hold a closeout session with the public housing property manager to discuss observations and conclusions.

B. After On-Site Review
- Record deficiencies, findings and corrective actions. The corrective action must include a requirement that the project manager correct identified errors and omissions. The project manager must also describe how systems systems, controls, policies and procedures were adjusted or changed to assure that the errors and omissions do not recur.
- Complete the Review Summary.
- Distribute the review report, with findings, concerns and corrective actions to the public housing agency.

C. Management Review Deficiency Follow up
- Conduct follow-up activity until all corrective actions as required in the Summary Report have been completed.

Management Review for Public Housing Projects	U.S. Department of Housing and Urban Development Office of Public and Indian Housing	OMB Approval No. ____ Exp. _____

Review Summary

PHA Name and Code:	Project Name and Number:
PHA Address:	Project Address:
Executive Director:	Project Manager:
PHA Phone:	Project Phone:
Review Code:	Number of Units:
Review Dates:	Occupancy Type:
PHA email address:	Project email address:
	DOFA Date:

Categories	Review Results	Scoring Management Operations			
	No. of Findings	Grades	Grade Values	Maximum Points	Actual Points
1. General Appearance and Security					
1.1 Appearance and Market Appeal					
1.2 Security					
2. Follow-up and Monitoring of Project Inspections					
2.1. Exigent Health and Safety (EHS) Deficiencies					
2.2 Lead-Based Paint Inspection Deficiencies					
3. Maintenance and Modernization					
3.1 Unit Inspections					
3.2 Work Orders					
3.3 Preventive Maintenance					
3.4 Energy Conservation/Utility Consumption					
3.5 Modernization					
4. Financial Management					
4.1 Accounts Payable					
4.2 Rent Collection					
4.3 Budget Management					
4.4 Procurement					
5. Leasing and Occupancy					
5.1 Vacancy Rate					
5.2 Turnaround Time					
5.3 Occupancy Review					
6. Tenant/Management Relations					
6.1 Economic Self-Sufficiency					
6.2 Resident Involvement in Project Administration					
7. General Management Practices					
7.1. Management Review Findings					
7.2. Other Prior Review Findings					
7.3. Insurance					
Totals				**Sub-Total:**	
				Adjustment	
				Adjustment	
				Adjustment	
				Total Score:	

Name and Title of Person Preparing this Report: (Please type or print):	Name and Title of Person Approving this Report: (Please type or print):
Signature:	Signature:
Date:	Date:

Form HUD-5834(xxxxx)
DRAFT FOR INTERNAL HUD USE ONLY

1. GENERAL APPEARANCE AND SECURITY

1.1 Appearance and Market Appeal

Rate the project on curb appeal and marketability in the 12 categories listed below. Enter a “2” (highest rating), “1” (moderate rating), or “0” (lowest rating) for each category. Enter “EX” to exclude the category. Do not leave any boxes blank.

Category	Rating	Category	Rating
1. Project Entrance		7. Landscaping	
2. Building Exterior		8. Graffiti	
3. Paved Surfaces		9. Public Spaces and Amenities	
4. Fencing, Railing, Porches, Overhangs, Ramps		10. Windows	
5. Overall Project Appearance		11. Project Debris	
6. Trash		12. Units	

Overall Project Rating:

Comments:

1.2 Security

Please indicate if there is evidence of project crime, as indicated by the following (check all that apply):

☐ Crime statistics ☐ Discussions with law enforcement ☐ Discussions with residents
☐ Law enforcement certification ☐ Reviewer Observations ☐ Other

If any boxes above are checked, has the project developed, in coordination with the local government, an anti-crime security plan? **Yes** ☐ **No** ☐

Has the project formally adopted screening policies/procedures that deny admission based on the following criteria (all are required)? **Yes** ☐ **No** ☐

- Recent history of drug-related or violent criminal activity
- Evicted from federally assisted housing in last 3 years because of drug activity
- Currently engaging in the illegal use of controlled substance, or drug activity
- Convicted of manufacturing or producing methamphetamine on the premises of the project
- Sex offenders subject to a lifetime registration requirement
- Alcohol abuse or a pattern of drug or alcohol abuse that might threaten other residents

Has the project formally adopted polices/procedures to evict residents under the following circumstances (all are required)? **Yes** ☐ **No** ☐

- Drug-related criminal activity
- Alcohol abuse
- Criminal activity

Comments:

2. FOLLOW-UP AND MONITORING OF PROJECT INSPECTIONS

2.1 Follow-Up and Monitoring of Project Inspections and Observations (Sampling is at the reviewer’s discretion.)

Were all EHS deficiencies from the most recent PASS/REAC inspection repaired/abated in 24 hours or less? **Yes** ☐ **No** ☐ **Unclear** ☐ **NA** ☐

Comments:

2.2 Follow-Up and Monitoring of Lead-Based Paint Inspection – The following questions only apply to family properties, or elderly properties housing children under six years of age, that were constructed prior to 1978 or to properties with EIBLL reports.

Are required LBP inspections completed or revisions/augmentations of prior inspections completed, if necessary? **Yes** ☐ **No** ☐ **Unclear** ☐ **NA** ☐

Has a risk assessment been completed, if required? **Yes** ☐ **No** ☐ **Unclear** ☐ **NA** ☐

Has the PHA abated the LBP deficiencies or has it taken appropriate interim measures? **Yes** ☐ **No** ☐ **Unclear** ☐

If EIBLLs have been reported, have risk assessment and hazard reduction, if necessary, been completed/initiated? **Yes** ☐ **No** ☐ **Unclear** ☐ **NA** ☐

Comments:

3. MAINTENANCE

What was the project's latest Physical Assessment Sub-System score based on a 100 point scale?

3.1 Unit Inspections

Does the project have an adequate system to track annual unit inspections? **Yes** ☐ **No** ☐

For the 12-month period prior to the review, what percentage of required inspections was completed?

Comments:

3.2 Work Orders

Does the project have an adequate system to track tenant-generated maintenance work orders? **Yes** ☐ **No** ☐

What was the average completion time for tenant-generated maintenance work orders during the review period?

If the property has made progress in the preceding three years to reduce the period of time required to complete maintenance work orders, what was the average completion time for maintenance work orders for the month ending 3 years prior to the management review?

Comments:

3.3 Preventive Maintenance

Complete the table below to identify systems included in the preventive maintenance plan.

PREVENTIVE MAINTENANCE PLAN					
Systems	**Does it apply to the property?**	**Included in Plan?**	**System**	**Does it apply to the property?**	**Included in Plan?**
☐ HVAC	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐	☐ Boilers	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐
☐ Security Systems	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐	☐ Emergency generators	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐
☐ Fire Safety	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐	☐ Other (Specify)	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐
☐ Roof	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐	☐ Other (Specify)	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐
☐ Flashing, gutters, downspouts	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐	☐ Other (Specify)	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐
☐ Intercoms /Doorbells	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐	☐ Other (Specify)	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐
☐ Accessibility	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐	☐ Other (Specify)	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐
☐ Elevators	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐	☐ Other (Specify)	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐
☐ Mechanical	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐	☐ Other (Specify)	**Yes** ☐ **No** ☐	**Yes** ☐ **No** ☐

Has the preventive maintenance plan been implemented for all systems? **Yes** ☐ **No** ☐

If not, what percent of the elements in the preventive maintenance plan were implemented?

Is there an annual inspection of buildings, grounds, common areas, non-dwelling space and major systems? **Yes** ☐ **No** ☐

Comments:

3.4 Energy Conservation/Utility Consumption

Does the project have an energy audit completed or updated within the past 5 years? **Yes** ☐ **No** ☐

Is the energy audit less than 1 year old? **Yes** ☐ **No** ☐

Does the energy audit contain cost-effective recommendations? **Yes** ☐ **No** ☐

Has the project implemented all cost-effective measures? **Yes** ☐ **No** ☐

If not, and if the audit is more than one year old, has the project developed an implementation plan that identifies, at a minimum, the items listed below?
Yes ☐ **No** ☐

- Cost effective items from the audit
- Estimated cost of each item
- Planned funding source for each item
- Anticipated date of completion for each item

Is the project on schedule with the implementation plan, based on available resources? **Yes** ☐ **No** ☐

Comments:

3.5 Modernization

Has a physical needs assessment been completed for the project? **Yes** ☐ **No** ☐

If so, has it been updated in the last five years? **Yes** ☐ **No** ☐

Does it estimate the useful life remaining and modernization cost for all major building systems? **Yes** ☐ **No** ☐

Is there a plan and budget for addressing the project's modernization need for any major building system that is projected to reach the end of its useful life in the coming PHA fiscal year? **Yes** ☐ **No** ☐

Is it consistent with the PHA's Annual Plan? **Yes** ☐ **No** ☐

Was there a plan to perform modernization work at the project during the previous PHA fiscal year? **Yes** ☐ **No** ☐

Was the planned modernization work completed? **Yes** ☐ **No** ☐

Comments:

4. FINANCIAL MANAGEMENT/PROCUREMENT

4.1 Accounts Payable

Does the project have an adequate system to track accounts payable? **Yes** ☐ **No** ☐

For the most recent accounting period, how many invoices not in dispute were more than 30 but less than 60 days outstanding from the billing date?

For the most recent accounting period, how many invoices not in dispute were more than or equal to 60 days outstanding from the billing date?

Comments:

4.2 Rent Collection

Does the project have an adequate system to track and document rents collected and rents charged? **Yes** ☐ **No** ☐

For the most recent review period, what was the percentage of rents collected to rents charged?

Comments:

4.3 Budget Management

Does the project have a Board-approved budget for the assessed fiscal year? **Yes** ☐ **No** ☐

Does the project budget indicate a shortfall (negative net cash flow) for the fiscal year? **Yes** ☐ **No** ☐

If yes, does the project have a plan to address the budgeted shortfall? **Yes** ☐ **No** ☐

Does the project manager receive regular operating statements showing current project revenue and expenditures? **Yes** ☐ **No** ☐

Does the operating statement show a year-to-date shortfall (negative net cash flow) for the fiscal year? **Yes** ☐ **No** ☐

If yes, are these shortfalls due to periodic/seasonal fluctuations in revenue/expenditures that will be corrected by fiscal year-end? **Yes** ☐ **No** ☐

If not, does the project have a plan to address the year-to-date shortfalls? **Yes** ☐ **No** ☐

Comments:

4.4 Procurement

Is the project operating under a procurement policy that is current, complete, and consistent with 24 CFR 85.36 and HUD Handbook 7460.8 REV-2? **Yes** ☐ **No** ☐

Does the PHA maintain adequate files and documentation for its procurement actions? **Yes** ☐ **No** ☐

Based on a sample of procurement contracts, has the project:

- Complied with requirements to promote full and open competition? **Yes** ☐ **No** ☐
- Prepared independent cost estimates where needed? **Yes** ☐ **No** ☐
- Performed a cost or price analysis to determine price reasonableness where needed? **Yes** ☐ **No** ☐
- Awarded contracts to the lowest, most responsive bidder, where appropriate? **Yes** ☐ **No** ☐
- Maintained a system of effective contract enforcement to assure contractor compliance? **Yes** ☐ **No** ☐
- Obtained prior HUD approval when required? **Yes** ☐ **No** ☐
- Complied with Section 3 requirements where applicable? **Yes** ☐ **No** ☐
- At a minimum requirement, does the PHA's procurement of energy conservation measures specify Energy Star or Federal Energy Management Program (FEMP) products and appliances? **Yes** ☐ **No** ☐
- If not, is there a justification on record as to why Energy Star or FEMP products were not required? **Yes** ☐ **No** ☐

Comments:

5.LEASING AND OCCUPANCY

5.1 Vacancy Rate

Does the project have an adequate system to track vacancy days? **Yes** ☐ **No** ☐

For the review period, what was the vacancy rate?

If the property has made progress in the preceding three years to reduce the vacancy rate, what was the vacancy rate for the month ending 3 years prior to the management review?

Comments:

5.2 Turnaround Time

Does the project have an adequate system to track vacant unit turnaround time? **Yes** ☐ **No** ☐

For the review period, what was the average turnaround time?

Comments:

5.3 Occupancy Review (See forms HUD-5834-A and 5834-B)

Number of files reviewed:

Is income correctly computed and verified? **Yes** ☐ **No** ☐

Is rent correctly computed and verified? **Yes** ☐ **No** ☐

Were applicants denied admission in accordance with the Tenant Selection Plan? **Yes** ☐ **No** ☐

Were applicants admitted in accordance with the Tenant Selection Plan? **Yes** ☐ **No** ☐

Were move-outs processed correctly? **Yes** ☐ **No** ☐

Does the lease contain the required provisions? **Yes** ☐ **No** ☐

Has the grievance procedure been implemented appropriately? **Yes** ☐ **No** ☐

Has the project complied with electronic reporting requirements for the PIC Form-50058 system? **Yes** ☐ **No** ☐

Has the project complied with UIV procedures for safeguarding data, system security and the resolution of income discrepancies? **Yes** ☐ **No** ☐

Comments:

6.TENANT MANAGEMENT RELATIONS

6.1 Economic Self-Sufficiency

Do at least 85 percent of the households have a head, spouse or sole member that is an elderly or disabled person? **Yes** ☐ **No** ☐

What is the current percentage of adults with some form of employment income?

What is the current percentage of adults participating in self-sufficiency?

Identify self-sufficiency opportunities offered by project and/or opportunities where project coordinates with an outside agency to offer. Check all that apply for the review period:

Service	
☐ Child Care and/or child care seminars	☐ GED Classes
☐ Financial Counseling	☐ Vocational Training/Job Training
☐ Homeownership Counseling	☐ Other Self-sufficiency Activities (explain in comments)
☐ Substance Abuse Counseling	☐ Other Educational Activities (explain in comments)

Comments:

6.2 Resident Involvement in Project Administration

Identify resident involvement opportunities offered by the project at the time of the review. Check all that apply.

Service	
☐ Newsletter	☐ Contracts with Resident-Owned Businesses
☐ Neighborhood Watch Program	☐ Substance Abuse Counseling
☐ Regular Tenant Meetings	☐ Service Coordinator
☐ Resident Participation on Committees	☐ Neighborhood Networks Center
☐ Tenant Management	☐ Other (explain in comments)

7. GENERAL MANAGEMENT PRACTICES

7.1 Prior Management Review Findings

Does the project have outstanding findings/corrective actions from prior asset management reviews? **Yes** ☐ **No** ☐

Have corrective actions been initiated and is progress being made on resolving past review findings? **Yes** ☐ **No** ☐

Comments:

7.2 Other Prior Review Findings

Does the project have outstanding findings/corrective actions from other reviews? **Yes** ☐ **No** ☐

Have corrective actions been initiated and is progress being made on resolving other past review findings? **Yes** ☐ **No** ☐

Comments:

7.3 Insurance

Does the project have the insurance coverage required by the Annual Contributions Contract? **Yes** ☐ **No** ☐

Insurance Policies Held	Does it apply?	Is a current policy in place?
Commercial Property	☐	☐
Commercial General Liability	☐	☐
Workers' Compensation and Employers Liability	☐	☐
Owned and non-owned Automobile Liability	☐	☐
Theft, Disappearance and Destruction (if not covered in property insurance coverage.)	☐	☐
Employee Dishonesty (Fidelity Bond)	☐	☐
Boiler and Machinery	☐	☐
Directors and Officers or Public Liability	☐	☐
Law Enforcement Liability	☐	☐
Flood Insurance	☐	☐
Wind Insurance	☐	☐
Other (please specify)	☐	☐

Comments:

Section 5 Maximizing Occupancy

BACKGROUND

A primary responsibility of the public housing program is full utilization of the asset. This means that all units in the property are leased. One of HUD's criteria for a non-performing property is one that is below 95 percent occupancy. However, if it is below 97 percent occupancy, the property will lose operating subsidy.

HUD considers occupancy rate a "primary" management assessment.

In addition, occupancy rate is a key indicator under PHAS. A project will only receive full points under the Occupancy Rate Indicator if the project maintains a 96 percent occupancy rate.

One of the most important reports kept by the property manager is the vacancy report. This report should be kept up daily and submitted to the asset manager weekly.

OCCUPANCY AND FINANCIAL HEALTH OF THE PROJECT

No operating subsidy is earned on a vacant unit (with the exception of HUD approved vacancies). Approved vacancies include:

- Units undergoing modernization (if on schedule)
- HUD-approved units used for resident services, resident organizations, FSS, and anti-crime
- Units in court litigation
- Units undergoing casualty loss settlements
- Units vacant due to declared disaster (federal or state)
- Units vacant due to changing market conditions (only upon appeal, with HUD approval).

In addition, projects receive operating subsidy for a limited number of vacancies – up to three percent of total units.

- PHAs with 100 units or less get subsidy for up to five vacancies.

STRATEGIES TO MAXIMIZE OCCUPANCY

MARKETING AND SELLING

Marketing is crucial—you have to attract prospective renters – you then have to "close the deal" by actually selling the unit, the property, the neighborhood—and the onsite property management staff.

Aim for curb appeal above market niche. General appearance and curb appeal will be discussed shortly. This is probably the number one deal-maker or deal-breaker. Studies show that most renters decide just driving by a development whether or not they want to call this development home.

Show a clean unit. The number one turnoff to prospective renters, once you've got them this far, is when they're shown a unit that's even just a little bit dirty. The unit should be inspected after the make-ready to ensure that the unit is spotless and that all the details are polished.

- Show or describe the amenities in the unit and try to make the prospect feel at home. Be enthusiastic and informative. Involve the person in the whole process. Ask questions that will create images of "their new home," the furniture in the apartment, etc. After the tour has been completed, it is now time to "close the deal."

Sharpen leasing practices. The leasing process needs to be as sharp, or sharper, than the open market. Leasing offices need to be attractive and well-decorated, and staff should be dressed professionally. The office needs to be easy to find, open some evenings and weekends, and signage clear. When potential applicants call, they should experience a welcoming tone from the very first interaction.

Map out the neighborhood. Canvass the 6-7 square blocks surrounding the development. Work with the organizations working with your target populations in order to highlight resources near the project.

Work together with other organizations, institutions, social service agencies, and employers. You have a common mission and common customers with many community partners. Think about Legal Aid, advocacy groups, community colleges, and your FSS coordinating committee. A collaborative marketing campaign will help spread the word.

Everyone is on the selling team. If the PHA has a centralized waiting list, that team needs to know that they're part of the selling team. If the applicant feels like they're navigating a vast bureaucracy, you've lost renters. Everyone onsite needs to meet, greet, and be part of the leasing and selling team. Making sure that everyone is part of the selling team means all site employees, including maintenance staff, demonstrate topnotch customer service. Again, brochures about neighborhood resources, knowing the market and the competition, and understanding the economic self-sufficiency opportunities available to public housing residents are all selling techniques.

Offer incentives. Incentives can help boost lease-up. Free cable hook-up, for example, can attract potential renters. Incentives may not involve a financial commitment—remember that a learning lab, a training program, a professional service offered onsite, collaborations where community partners bring their services onsite are all incentives that the private sector may not match.

Occupancy standards. There is no HUD regulation that requires all projects to have the same occupancy standards. If you have an older, hard-to-house project with small bedrooms, for example, you could consider revising your PHA's occupancy standards (which will require PHA Plan and ACOP revision) to have a standard of one child per bedroom.

Do a mini-model. Furnishing one room or just decorating one or two rooms can be a tremendous selling point. Some charming little decorations or nice touches help the applicant picture the unit as a home. Use your hardest to lease unit as a mini-model, and sell that unit—you might want to rent it as is, with the decorations. When that unit is leased, use the next hardest to lease unit as a mini-model. Private sector managers swear by this strategy.

- Keep the model or mini-model unit close to the office. You have a tight schedule and so do many prospective renters – you don't want to cut into valuable showing and selling time because the mini-model is at the other end of the development from your office.
- If possible, try to have the model or mini-model on the first floor. They will be more convenient for prospective renters and for you.
- Be creative in your decoration. Perhaps there are interns from an art school or design department of a university who would be willing to decorate!

Consider site-based waiting lists. If lease-up time is taking too long with a centralized waiting list system, your PHA should assess whether to transition to site-based waiting lists.

Provide world-class customer service. You can't fake it just for new renters. Customer service is as much an attitude as an activity, and it permeates the culture at each development. Customer service is demonstrated in each interaction by everyone at the development. Here are some of the hallmarks of customer service:

- Know the residents. Walking around and talking to residents, attending resident events, understanding self-sufficiency activities in which they're engaged, knowing the families – engaged, friendly professionals build relationships. Moving into a development means a hopefully long-term relationship with the manager.
- Key points of contact – maintenance staff, the receptionist, the property manager, and occupancy specialists all demonstrate the commitment to treat everyone with the same level of respect.
- Answering the phone is the invitation to apply. A potential applicant's telephone call to the office for rental information may be the only opportunity staff has to get them into the office. How the conversation is handled, and the response given to callers' questions, could determine whether or not the caller will want to visit the property to see an available unit.
- Enforce the lease. Residents want a safe place to live. Families want their children to be safe. Being consistent and firm in enforcing the lease and collecting rents sends the message that the property is being managed well.
- Train staff to do the basics right. Staff may have training needs in rent calculation, customer service, reasonable accommodation, or property management. Make sure everyone at the development understands the mission.
- Supervise effectively to ensure all staff understands customer service expectations. Provide clear expectations, train, give feedback, mentor, and address when expectations aren't met. Customer service should be an employee performance measure.
- Communication should be frequent, clear, friendly, and simple.

Section 6 Chapter 7 Post-Test

1. The Public Housing Assessment System (PHAS) interim rule is to:
   a. Assess performance project by project
   b. Implement a third-party assessment
   c. Eliminate PHA self-certification
   d. All of the above

2. The Capital Fund indicator under PHAS is applied:
   a. Project by project
   b. To the public housing program as a whole
   c. PHA-wide, including the Housing Choice Voucher program
   d. All of the above

3. A PHA will receive the full five points under the occupancy subindicator if the overall occupancy rate is 95 percent or above:
   a. True
   b. False

4. The two components under the Capital Fund indicator are occupancy rate and:
   a. Capital Fund obligation and expenditure
   b. Capital Fund expenditure
   c. Capital Fund obligation
   d. Physical work
   e. Procurement and contracting

5. The PHA will earn the full five points if it has obligated what percent or more of the grant amount for all of its grants on its obligation end date, or on the extended obligation end date, for all open CF grants that have obligation end dates during the assessed fiscal year?
   a. 98 percent
   b. 97 percent
   c. 90 percent
   d. 98 percent
   e. Up to PHA policy

Notes

CHAPTER 8 Obligation, Expenditure, and Procurement

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Understand the obligation and expenditure deadlines under the Capital Fund final rule
- Recognize basic procurement requirements of the PHA
- Identify the principles of ethics in procurement
- Recognize Section 3 requirements for procurement and contracting

Section 1 Obligation Deadlines and Requirements

OBLIGATION

624 CFR 905.306

As mentioned previously, the definition of *obligation* is a binding agreement for work or financing that will result in outlays, immediately or in the future.

- This includes funds obligated by the PHA for work to be performed under contract or by force account labor.
- Capital Funds should be transferred to operations and obligated by the PHA once the funds have been budgeted and drawn down by the PHA.

PHAs must obligate each Capital Fund grant, including formula grants, Replacement Housing Factor (RHF) grants, Demolition and Disposition Transitional Funding (DDTF) grants, and natural disaster grants, no later than 24 months after, and emergency grants not later than 12 months after, the date on which the funds become available to the PHA for obligation.

- HUD may grant an extension to this deadline for allowable reasons as stated in 24 CFR 905.306(c) and (d).

However, a PHA with unobligated funds from a grant can disregard this requirement for not more than 10 percent of the originally allocated funds from that grant.

The funds become available to the PHA when HUD executes the CF ACC Amendment.

Items and Costs

For funds to be considered obligated, all items and costs must meet the definition of *obligation*.

Extension to Obligation Requirement

The PHA may request an extension of the obligation deadline, and HUD may grant an extension for a period of up to 12 months, based on:

- The size of the PHA;
- The complexity of the CFP of the PHA;
- 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
- Any other factors that HUD determines relevant.

HUD Extension for Other Reasons

HUD may extend the obligation for a PHA for a period as HUD determines to be necessary, if HUD determines that the failure of the PHA to obligate in a timely manner is attributable to:

- Litigation;
- Delay in obtaining approvals from the federal government or a state or local government that is not the fault of the PHA;
- Compliance with environmental assessment and abatement requirements;
- Relocating residents;

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- PHAs in presidentially declared disaster areas;
- An event beyond the control of the PHA; or
- Any other reason established by HUD in a *Federal Register* notice.

Failure to Obligate

For any month during the fiscal year, HUD will withhold all new Capital Fund grants from any PHA that has unobligated funds in violation of these regulations.

The penalty will be imposed once the violations are known.

The PHA may cure the noncompliance by:

- Requesting in writing that HUD recapture the unobligated balance or the grant; or
- Continuing to obligate funds for the grant in noncompliance until the noncompliance is cured.

After the PHA has cured the noncompliance, HUD will release the withheld Capital Fund grant(s) minus a penalty of one-twelfth of the grant for each month of noncompliance.

Section 2 Expenditure

24 CFR 905.306

The PHA must expend all grant funds within 48 months after the date on which funds become available.

The deadline to expend funds may be extended only by the HUD-approved extension of the obligation deadline.

- No other extensions of the expenditure deadline will be granted. All funds not expended will be recaptured.

Section 3 Procurement Requirements and Policies

PROCUREMENT REQUIREMENTS

2 CFR Part 200

The PHA's procurement policy must comply with Part 200 of Title 2 of the Code of Federal Regulations. 2 CFR Part 200 contains regulations known as the "Common Rule" because they apply to all state and local government recipients of federal housing assistance grants.

- This important reference includes several parts: Acronyms and Definitions, General Provisions, Pre-Federal Award Requirements and Contents of Federal Awards, Post Federal Award Requirements, Cost Principles, and Audit Requirements. In this class, primary attention is paid to Subpart D: Post Federal Award Requirements.
- 2 CFR Part 200 provides guidance on a variety of tasks, including development of a procurement policy and system, important parts of a contract administration system, general guidance on the standard of conduct for PHA employees involved in procurement of goods and services, and requirements for price and cost analysis.

HUD PROCUREMENT HANDBOOK (MANDATORY REFERENCE)

This handbook provides excellent guidance on all phases of procurement and contract management. The handbook was revised in March 2007 and includes several samples that PHAs may use in their entirety or modify to support the PHA Procurement Policy.

The revised handbook incorporates changes in federal laws and regulations and was written to align HUD guidance on asset management and project based management of public housing. The handbook only applies to public housing agencies (PHAs) in their operation of public housing, including any development or capital improvement activities.

The handbook does not apply to Indian Housing Authorities or the operation of the Section 8 housing choice voucher program. It also does not apply to fees earned by the Central Office Cost Center in relation to the oversight management of the public housing programs. The fee income is not considered federal program income and so is not subject to 2 CFR 200. However, if there are applicable state or local laws on procurement, PHAs should check to determine applicability at those levels.

- Although one of the reasons the handbook was revised was to ensure it was supportive of the asset management transition, there have been no significant changes or reduction in requirements in the procurement function. Rather, PHAs are encouraged to ensure any staff that has procurement authority is well trained in procurement requirements and is provided access to the HUD handbook and, most importantly, to the PHAs Procurement Policy.

State and Local Law

In addition, if the PHA is located in a state or local jurisdiction that has procurement laws, the PHA must ensure that its policy complies with those laws as well.

Procurement Guidance

HUD published the Housing Manager's Procedures Manual in November 2005.

Chapter 11 is the procurement chapter.

The manual contains some excellent guidance for PHAs in the transition of expertise and authority to a more project-based model. The manual is on the NMAreferences.com website and can also be found on HUD's website.

In addition, the Office of Management and Budget (OMB) issued a memo in June 2018 raising the federal micropurchase and small purchase levels. Any OMB memos containing guidance on procurement should also be followed.

THE PHA'S PROCUREMENT POLICY

The PHA's Board must approve the PHA's procurement policy, which establishes spending approval limits.

- The table below is an example of a PHA's procurement policy regarding purchase amount and procurement method.

Purchase Amount	Procurement Method
Less than $50	Petty cash. Require receipt from vendor. Receipt must be attached to completed petty cash log and request.
$50 to $10,000	Micropurchase. One reasonable price quote. Purchases of this nature should be equally distributed among qualified vendors, if practical, to assure competition.
$10,000 to $250,000	Three quotes (fax, written, or e-mail). Oral quotes may be obtained for building materials and supplies but not for services. Purchases of this nature should be equally distributed among qualified vendors, if practical, to assure competition.
Over $250,000	Formal advertisement and sealed bid.

Your PHA may also decide to use e-procurement, provided it complies with related federal procurement requirements.

Procurement Planning

Procurement planning is part of the annual budget process. Advance procurement means that goods and services are in place when and where they are needed, at a competitive price, and within the resources available of the approved operating budget.

In planning for a property's annual procurement needs, the property manager reviews (a) the unit inspections, (b) work orders (completed and outstanding), and (c) the record of spending (materials, equipment, services, etc.) of the prior 12 months.

Once the budget is approved, the property manager establishes a schedule for requisitioning goods and services to ensure that goods and services are available when needed, but will not result in the stockpiling of excess supplies or the lapse of services.

Section 4 Methods of Procurement

The most often used methods of procurement in Capital Fund purchasing are sealed bidding and competitive/non competitive proposals. However, there are other methods of procurement which are covered in detail in another NMA seminar.

SEALED BIDDING

INVITATIONS FOR BID (IFB)

For construction contracts and routine supplies above the limit for small purchases, the contracting officer (who may be the property manager) needs to prepare an independent cost estimate and specifications, and publicize the upcoming procurement (e.g., in a local newspaper or trade journal).

The next step is to prepare a solicitation known as an invitation for bid (IFB), which contains specifications, instructions to bidders, and required contract forms to be used.

- The IFB is issued to all sources who responded to the public notice, as well as any other firms known by the PHA to be able to perform the work. The PHA's procurement policy should specify what is considered adequate time for potential contractors to submit bids.
- PHAs can use the internet to conduct public procurements as long as the procurements comply with applicable regulations and the PHA's procurement policy.

PRE-BID CONFERENCE

After the IFB, the PHA may hold a pre-bid conference with prospective contractors. Notice of any conference should be included in the IFB.

The conference should be attended by supporting technical staff, so that questions can be answered. At the conference, the PHA should state that nothing at the conference will change the terms of the IFB unless an amendment is issued.

A transcript or summary of the conference should be sent to all those on the solicitation mailing list, not just those who attended. Attendance, while desirable, is not mandatory, and lack of attendance is not a basis for rejecting a bid.

Bid Opening

Each bid must be date/time stamped upon receipt. Sealed bids should be stored in a locked bid box, cabinet, or safe until the bid opening.

Sealed bid opening is a public process. Any interested parties are permitted to attend the bid opening.

At the time stated in the IFB, the PHA then conducts a public bid opening, reading aloud the names of the bidders and prices received.

No commitment is made to any bidder at the bid opening.

Analyze Bids and Award Contract

After the bids have been publicly opened and read, all the bids are tabulated, showing the names of bidders and prices.

The next step is to determine whether the low bid is responsive to the IFB (conforms to its requirements), and, if the bid is responsive, analyze the low bidder's capability to do the work.

- The PHA should also perform a price analysis, which may be as simple as just comparing the prices received to the in-house cost estimate to ensure that the contract price will be reasonable.
- The PHA should also make sure that bidders have not imposed conditions or additional terms to the bids.

Documented previous unsatisfactory performance is grounds for determining that the bidder is not responsible.

Check HUD's list of debarred contractors. The PHA can remove a contractor from the bidding process when the contractor is on the debarred list.

After determining that the low bidder is both responsive to the IFB and responsible to perform the work, the contract is then awarded.

Any bid rejection must be fully documented with all reasons for rejection clearly stated.

Competitive Proposals

While sealed bidding is the preferred method for conventional construction contracting, contracting for professional services (including architect-engineer services, consulting, etc.) is done through competitive proposals.

Under competitive proposals, both technical and price factors are considered in awarding the contract. The chief advantage of this approach is that it allows the PHA to hold discussions with each offeror to ensure there is a complete understanding of the work to be undertaken.

The process begins with the PHA describing its needs in a statement of work, publicizing the upcoming procurement (such as advertising in local newspaper or trade journal), and preparing both an independent cost estimate and a technical evaluation plan for analyzing proposals received.

The PHA then prepares a solicitation known as a request for proposals (RFP), which identifies the technical and price evaluation factors and the format for submitting technical and price proposals.

The PHA issues the RFP to the respondents of the public notice and those on the PHA's mailing list.

When proposals are received on the closing date stated in the RFP, proposals are not publicly opened, but instead are kept confidential.

- The primary reason for not having a public opening is that there are multiple award factors as compared to sealed bidding where the bid price is the only selection factor, subject to the determination that the contractor is responsive and responsible.
- Normally, it takes several hours (or even days depending on the complexity of the procurement) to evaluate proposals.
- After selection is made, the basis for selection is subject to public inspection.

After proposals are received, the PHA then evaluates the proposals from both a technical and price standpoint, documents the evaluation in a written report, and establishes a competitive range of offerors who have a reasonable chance of receiving the contract.

The PHA notifies those offerors whose proposals are so deficient as to preclude their being considered for award.

A separate negotiation session (in person or by phone) is then conducted with each offeror in the competitive range, to discuss both technical and price issues. At the conclusion of negotiations, the PHA establishes a cut-off date for receipt of best and final offers. Any offeror in the competitive range is permitted to change its offer at this time by submitting a revised proposal by the due date.

The PHA then evaluates the best and final offers and awards the contract to the best evaluated offeror, based on the price and technical factors stated in the RFP.

NONCOMPETITIVE PROPOSALS

There are four types of non-competitive purchasing:

1. Emergency
2. Special Market Conditions
3. Sole Source
4. Only one quote/bid received

Following are helpful examples:

Type	Example
Emergency: Defined as a situation where time is of the essence in preventing serious injury to the Agency or threatening the public's health, welfare or safety. All emergency purchases must be approved by the Regional Manager.	A car hits a post holding up a deck and the post needs immediate shoring to keep the deck from collapsing. Maintenance figures that $3000 of lumber is needed to shore up the post before a contractor can come out and repair. Once getting approval that this situation is an "emergency", you may purchase the lumber from the hardware store w/o having to get 3 bids for lumber.
Special Market Conditions: Defined as a situation where a vendor can offer goods and/or services at reduced prices for a limited time that cannot be reasonably matched by another vendor; e.g., "fire sale."	Joe's hardware is going out of business and every item is half price for two days. You need $2000 (at normal pricing) of lawn and garden supplies and can obtain these items at Joe's for $1000, so you do not need to get three quotes.
Sole Source: Defined as goods and/or services are of such a unique nature that only one vendor or company can provide the goods and/or services.	Some of the sod for the grounds at a community center is in need of replacement but in order to match the existing sod, only Schmidt's Sod carries the specific product that matches your specifications. You may purchase at Schmidt's without obtaining 2 other quotes for sod.
Only one quote/bid received: Can use the goods and/or services of the sole respondent if it is reasonably shown that a resolicitation is not in the best interests of the PHA.	You send out three vendor quote sheets to replace some fencing that was crushed by a PHA dump truck. Only Garcia Bros. responds with a quote. The fence is protecting the dumpsters and is needed to be replaced ASAP and to try to get other quotes would delay the installation of the fence and the dumpsters are too tempting a target for vandalism. You can buy the fencing from Garcia Bros. because they can deliver and install the same day

Section 5 Ethics in Public Procurement

The PHA's procurement policy should prohibit any employee of the agency from participating in the selection of a vendor or the award of a contract if a conflict-real or perceived-would be involved. An example of this would be if an employee, family member, partner, or any organization that employs or is negotiating to employ the employee's family member or partner, has a financial interest in the vendor selected for contract award.

It is also recommended that the policy prohibit employees who participate in a procurement process from accepting gifts, gratuities, favors, and kickbacks from current or potential vendors or contracts.

HUD Handbook 7460.8 REV 2 contains a chapter on ethics in public contracting. A copy of the Ethics chapter from the HUD Handbook can be found at the end of this chapter.

HUD’s Housing Manager's Procedures Manual includes the following practical guidance:

Ethics and Buying
Maintaining good relationships with your vendors is important. They can let you know about new products, shortages, upcoming price increases, etc.
It is easy to become overly friendly and relaxed with vendors. Successful sales people are usually fun to be with and to talk to. In working with sales people, buyers have to be conscious of maintaining both positive and professional relationships with vendors. Because we have, or are perceived to have, access to company purse strings, buyers may be more tempted to cross certain ethical lines.
Vendors may bring freebees or gifts when they visit. If they offer a little bit of inexpensive food, you can put it in the office to share. If they offer a free cup, hat, flashlight, or other token with a logo, it is best not to use or wear the item, because it can appear that the Agency is biased towards that vendor. Tell the vendor you are donating the item on their behalf. Ongoing office perks, like regularly delivered coffee, cannot be accepted. You can always use the line, “The best gift you can provide us is great pricing and excellent service.”
As a general practice, don't go to lunch with your vendors, particularly if they pay but even if they don't. Buyers need to avoid even the appearance of bias, or that they may be willing to accept gifts or perks that could affect their buying decisions. Don't worry about offending sales reps. It is common for businesses to prohibit vendor lunches, both because it could create a poor appearance and also so that staff who are purchasing goods/services are not receiving benefits not available to other staff.
Never accept free tickets to games or shows, substantial gifts sent directly to your home or other valuable items or perks. By accepting gifts, you risk the Agency's reputation as well as your own. If you accept a gift or perk that you wouldn't want a manger or supervisor to know about, you've probably crossed an ethical boundary.
Do not request or accept special pricing when buying items for yourself, if the special price is due to the fact that you are an Agency employee. Don't advertise your position if you are not buying for the agency.

Section 6 Procurement Summary

	Small Purchases		Sealed Bids	Competitive Proposals	Non-Competitive Proposals
	Micro Purchases Up to $10,000	$10,000 to $250,000	$1,000,000 and higher	$1,000,000 and higher	
Independent Cost Estimate	Not required	Required (minimum documentation)	Required (detail commensurate with complexity)	Required (detail commensurate with complexity)	Required
Competition	No required competition but price must be reasonable	Solicit REASONABLE number of written or verbal quotes (recommend 3)	Specification IFB Advertise Open publicly	Scope of Work RFP Evaluation Factors Advertise Evaluate Proposals Evaluation Report	Sole source or only one bidder

Section 7 Section 3 of the HUD Act of 1968

BACKGROUND

24 CFR Part 75

Section 3 is a provision of the HUD Act of 1968 that requires recipients of certain types of HUD financial assistance to create job training, employment, and contract opportunities for low and very low-income individuals.

Section 3 is applicable to public housing financial assistance and to Section 3 projects, which means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000 ($100,000 in the case of Healthy Homes and Lead Hazard Control assistance).

PHAs and their contractors must make their best efforts to meet HUD-established benchmarks specifying the ratios of the number of labor hours worked required for Section 3 workers and targeted Section 3 workers.

- A *Section 3 worker* could be a person whose income for the previous calendar year is under the HUD-established income limit, a person who is employed by a Section 3 business concern, or a YouthBuild participant. A targeted Section 3 worker could be a worker employed by a Section 3 business concern, a public housing or Section 8 resident, a resident of other public housing projects or Section 8-assisted housing managed by the PHA providing the assistance, or a YouthBuild participant.

Compliance and Enforcement

While Section 3 compliance was previously monitored under HUD's Office of Fair Housing and Equal Opportunity, Section 3 compliance is now monitored under the program office responsible for the financial assistance. Complaints alleging noncompliance should be directed to that specific program office as well.

HUD establishes benchmarks for Section 3 workers or targeted Section 3 workers in the Federal Register not less than every three years. Benchmarks consist of the following two ratios:

- The number of labor hours worked by **Section 3 workers** divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's fiscal year
- The number of labor hours worked by **targeted Section 3 workers** divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's fiscal year

24 CFR 75.15

PHAs must report labor hours annually, and if benchmarks are not met, PHAs must report on the "qualitative nature" of its Section 3 compliance activities and those of its contractors or subcontractors, including but not limited to:

- Engaging in outreach efforts to generate job applicants who are targeted Section 3 workers
- Providing training or apprenticeship opportunities
- Providing technical or other assistance to Section 3 workers to help them compete for jobs or in seeking employment
- Providing assistance to apply for or attend community college, a four-year educational institution, or vocational or technical training
- Engaging in outreach efforts to identify and secure bids from Section 3 business concerns

Job Training and Employment Opportunities

A Section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards), or other public construction such as street repair, sewage line repair or installation, updates to building facades, etc.

Some examples of Section 3 training and hiring opportunities include accounting, architecture, appliance repair, bookkeeping, IT, payroll, photography, purchasing, transportation, and desktop publishing.

Trades include bricklaying, carpentry, carpet installation, cement/concrete, demolition, drywall, electrical, elevator construction and repair, fencing, HVAC, janitorial, landscaping, machine operation, surveying, painting, plastering, plumbing, and tile setting.

PHA's Section 3 Responsibilities

24 CFR 75.7

Each PHA (and their contractors, subcontractors, or subrecipients) are required to make their best efforts to provide employment and training opportunities generated by the public housing financial assistance to Section 3 workers in the following order of priority:

1. To residents of the public housing projects for which the public housing financial assistance is expended
2. To residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA
3. To participants in YouthBuild programs
4. To low and very low-income persons residing within the metropolitan area (or nonmetropolitan county)

Contracting Opportunities

PHAs (and their contractors, subcontractors, or subrecipients) are required to make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following order of priority:

1. To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which assistance is provided
2. To Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance
3. To YouthBuild programs
4. To Section 3 business concerns that provide economic opportunities for Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided

A Section 3 business concern is a business for which:

- At least 51 percent is owned and controlled by low or very low-income persons;
- Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
- At least 51 percent is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Section 3 Best Practices

As with any large-scale, long-range, and collaborative initiative, your PHA's Section 3 program should be planned out strategically. Look at the mission, brainstorm SWOTs, identify stakeholders, assess gaps in your internal resources, and put together a project plan that includes responsibilities and timelines.

Collaboration begins within the PHA! Procurement can't do this alone. You'll also need to include resident initiatives, human resources, and finance - and your Section 3 efforts must be championed from the top down with strong and supportive leadership.

Self-sufficiency staff and programs are key internal partners, too. Do you have an FSS program? Tie in Section 3 to your residents' individual training and services plans (ITSPs). A ROSS program? Youthbuild? Public housing self-sufficiency projects? All your economic self-sufficiency programs and activities can contribute to Section 3 success.

Designate or hire a Section 3 coordinator. This is a crucial step. This person will be the Section 3 champion, and his or her work must be championed from the top.

Now you're ready to creatively and effectively collaborate with community partners. Work with the people doing the work! They'll help make your Section 3 program successful. These crucial partners will help you design an effective Section 3 program, and will help outreach, recruit, train and ensure hiring. Consider forming a Section 3 advisory board and include decision makers and experts from your local city or county government, Department of Labor Workforce Investment Board, welfare agency, community colleges, skilled trades, and other key stakeholders. At least one public housing resident should be a participant on the Section 3 advisory board.

Learning Activity 8-1: Discussion

- What has your PHA done to implement Section 3? What worked well or is working well? What could your PHA do to more effectively implement Section 3? Take notes and discuss in small groups.

Section 8 Chapter 8 Post-Test

1. Section 3 compliance is monitored through HUD's Office of Fair Housing and Equal Opportunity (FHEO).
   a. True
   b. False

2. PHAs must obligate each Capital Fund grant (except for emergency grants) no later than:
   a. Three federal fiscal years after the date on which funds become available
   b. 24 months after the date the PHA submitted its CF 5-Year Action Plan
   c. 24 months after the date on which funds become available
   d. Up to PHA policy

3. To obligate funds means, in simple terms, that:
   a. The funds have been spent
   b. A contract has been signed
   c. The funds have been budgeted
   d. The PHA has put the work out to bid

4. The PHA must expend (spend) all grant funds how long after the date on which funds become available?
   a. 48 months
   b. 24 months
   c. 24 hours
   d. After the budget has been approved by the Board
   e. After the PHA has awarded the contract

5. Section 3 is a provision of the HUD Act of 1968 that requires recipients of certain types of HUD financial assistance to create job training, employment, and contract opportunities for low and very low-income individuals.
   a. True
   b. False

6. State law does not affect PHA procurement policies.
   a. True
   b. False

7. Procurement is a term for buying goods and services.
   a. True
   b. False

8. When can a PHA remove a contractor from the bidding process?
   a. When the contractor does not attend the site walk-through
   b. When the contractor has a bid more than ten percent below the in-house estimate
   c. When the contractor is on the debarred list
   d. When the contractor has not bid on similar previous contracts

9. In procurement policies and actions, conflict of interest must be avoided, but perceived conflict of interest is irrelevant.
   a. True
   b. False

10. PHAs must obligate emergency grants not later than how long after the date on which the funds become available to the PHA?
   a. 24 months
   b. 24 hours
   c. 12 months
   d. Up to PHA policy
   e. Up to state law

GLOSSARY OF PHA PROCUREMENT TERMS

Acceptance - The act of an authorized representative of the housing authority acknowledging that the supplies or services are in conformity with the contract requirements.

Amendment - Written revision made to a solicitation.

Annual Contributions Contract (ACC) - The contract between HUD and the PHA, that includes the terms and conditions for the operation, modernization and development of public housing. The current version of the ACC (form HUD-53012A, 7/95) does not contain any specific language governing PHA procurement activity, but incorporates by reference regulations promulgated by HUD at 24 CFR as well as applicable laws and regulations.

Bid - In the sealed bidding method of procurement, the offer submitted by a bidder.

Bid Splitting - The act of intentionally splitting a purchase into smaller purchases for the purpose of evading a bidding threshold regulation. This type of action is illegal.

Bidder's List - List of prospective contractors (also called **Source List** or **Mailing List**).

Cardinal Changes - Modifications to an existing contract which are beyond the general scope of that contract and are so extensive that a new procurement should be used.

Changed Conditions - Construction site/repair conditions which differ significantly from conditions indicated in the contract, or conditions ordinarily encountered in the performance of the type of work in the contract.

Change Order - Unilateral action taken by the Contracting Officer within the scope of the contract in order to modify the drawings, designs, specifications, method of shipping or packing, place of inspection, delivery, or acceptance of an existing contract.

Competitive Proposals - The competitive method of procurement used when small purchases and sealed bidding are not appropriate. Under this method, the housing authority issues an RFP soliciting price and technical proposals from potential sources; evaluates the proposals and establishes a competitive range; negotiates with those in the competitive range; receives and evaluates best and final offers from those in the competitive range; and makes award to the contractor offering the most advantageous proposal, considering price and the technical factors stated in the RFP.

Competitive Range - In a competitive proposals procurement (RFP), those proposals that, after evaluation by the housing authority, have a reasonable chance of receiving the award, both from a technical and cost standpoint.

Consortia - These are a special kind of PHA consortium where two or more agencies join together to perform planning, reporting and other administrative functions, including the joint preparation of a PHA plan.

Constructive Change Order - Informal requests for additional work or services caused by some act or omission to act on the part of the housing authority which causes a contractor extra work, delays, or money.

Contract - A promise or set of promises for breach of which the law gives a remedy, or performance of which the law recognizes as a duty; a legal instrument providing for the purchase, lease or barter of property or services for the direct benefit of the housing authority.

Contract Administration - The monitoring of the contractor's performance in order to assure compliance with performance requirements and contract terms.

Contract Modification - Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of an existing contract.

Contracting Officer - An official authorized by the executive director to enter into or administer procurement contracts and make related determinations and findings.

Cost-Reimbursement Contract - Contract in which the buyer and seller agree on an estimate of contract costs. The buyer agrees to reimburse the seller for reasonable, allowable, and allocable costs necessary to complete the work.

Cure Notice - A document the contracting officer sends to a contractor to notify the contractor that the contract may be terminated by reason of default if the condition endangering performance of the contract is not corrected in a specified number of days.

Excusable Time Delay - Failure to perform which is beyond the control and without fault or negligence of the contractor.

Federal Small Purchase Threshold - Maximum dollar amount for individual small purchases. PHAs may use the federal small purchase threshold (currently $150,000) or may establish a lower threshold in accordance with state or local requirements.

Firm Fixed-Price Contract - Contract that provides for a price which is not subject to any adjustment by reason of cost experience of the contractor in the performance of the contract; the preferred type of contract.

Indefinite-Quantity Contract - Contract used for procurements in which the exact number of deliverable items is not known at the time of contracting. The contract provides for a minimum and maximum amount of goods/services which may be ordered under the contract.

Independent (In-House) Cost Estimate - A written calculation of all items included in the scope of the work, tabulated under appropriate cost headings (direct costs, labor, overhead, and profit).

Inspection - The examination and testing of supplies and services to determine whether they conform to contract requirements.

Instrumentality - Means a subsidiary branch of the PHA through which functions or policies are implemented.

Intergovernmental or Interagency Agreement - An agreement between a PHA and a federal, state or local government agency (including other PHAs) for the provision of services or supplies. (Also referred to as cooperative agreements, memorandum of agreement and consortium agreement).

Internal Controls - Safeguards that ensure effectiveness and efficiency of operations, reporting reliability, and compliance with applicable laws, federal regulations, and housing authority policy.

Invitation for Bids (IFB) - Under the sealed bidding method of procurement, the written solicitation document which explains what the housing authority is buying and requests bids from potential contractors.

Joint Venture Partner - This is a participant, other than a PHA, in a joint venture, partnership or other business arrangement or contract for services with a PHA.

Labor-Hour Contract - Contract which provides for the procurement of property or services on the basis of direct labor-hours at specified, fixed hourly rates (which include direct and indirect labor, overhead, and profit).

Letter Contract - A written authorization to begin work issued prior to the negotiation of a formal contract; only allowed in emergency situations.

Level-of-Effort Contract - Contract (usually cost-reimbursement type) which specifies the number and type of person-hours which the contractor will apply in pursuing the project.

Major Change - Modification to an existing contract that is beyond the general scope of the contract or a change to a substantive element of the contract that is so extensive that a new procurement should be used.

Micro Purchase - Small purchases under $10,000 (or lower threshold established by PHA).

Modification - A written revision or change to the contract.

Negotiation - Discussion regarding technical and price proposals with offerors in the competitive range for a contract being awarded using the competitive proposals or noncompetitive proposals method of procurement.

Noncompetitive Proposals - The method of procurement in which the housing authority solicits proposal(s) from only one source or a limited number of sources, if justified in writing for one of the following reasons: the item is available only from a single source; public emergency will not allow enough time for a competitive procurement; inadequate response is received to a competitive solicitation; or HUD approves the use of noncompetitive proposals.

Proposal - In the competitive proposals or noncompetitive proposals method of procurement, the offer submitted by a potential contractor.

Qualifications-Based Selection (QBS) - A form of procurement of architect-engineering services by competitive proposals in which price is neither requested in the RFP nor used as an evaluation factor; instead, technical qualifications only are reviewed and a fair and reasonable price negotiated with the best qualified firm.

Quotation - In the small purchase method of procurement, the price or offer submitted by a quoter.

Request for Proposals (RFP) - Under the competitive proposals method of procurement, the housing authority's written solicitation to prospective offerors to submit a proposal based on the terms and conditions set forth therein. Proposal evaluation and contractor selection are based on the factors for award as stated in every competitive RFP.

Request for Quotations (RFQ) - Under the small purchase method of procurement, a brief written request for a price quotation from potential contractors.

Responsible Bidder - One who has the technical and financial capacity to secure the necessary resources to deliver the goods or services.

Responsive Bid - One which conforms exactly to the requirements in the Invitation for Bids (IFB).

Sanctions - Measures that may be invoked by HUD to exclude or disqualify contractors, PHA staff or agents acting on behalf of a PHA from participation in HUD programs; or, measures the PHA may take regarding employees, officers, agents, or others who violate the ethical standards of the policies of the PHA.

Sealed Bidding - The procurement method in which the housing authority requests competitive sealed bids. This method of procurement requires that specifications be written describing the requirements of the government clearly, accurately, and completely; a public bid opening is held; and evaluation of bids and award of the contract is based on the lowest bid submitted by a responsive and responsible contractor.

Show Cause Letter - A document the contracting officer sends to a defaulting contractor to notify the contractor that the contract may be terminated by reason of default unless the contractor can prove in 10 days that the condition was not his or her fault.

Small Purchase Procedures - Simplified method for acquiring supplies, materials and services (including construction) that do not exceed the PHA's small purchase threshold.

Small Purchases - Purchases of supplies and nonpersonal services which do not exceed the housing authority's dollar limitation in the aggregate.

Specifications - Clear and accurate description of the technical requirements of a service or supply contract.

Statement of Work - Written definition of work to be performed which establishes standards sought for the goods or services to be supplied; typically used for service contracts.

Subsidiary - A type of operating entity created and operated by a PHA over which it has a controlling interest. It may be wholly owned or controlled by the PHA and may be a non profit organization.

Supplemental Agreement - A type of contract modification to which both parties agree.

Termination for Cause - Termination of a contract on a unilateral basis when the contractor fails to perform, fails to make progress so as to endanger performance, or commits a default as specified in the contract.

Termination for Convenience - Termination of a contract by the housing authority on a unilateral basis when it no longer needs or requires the products or services, or when it is in the best interests of the housing authority.

Termination for Default - Termination of a contract when the contractor fails to perform or fails to make progress so as to endanger performance.

Time-and-Materials Contract - Contract which provides for payment of supplies and services on the basis of incurred direct labor hours (at fixed rates which include direct costs, indirect costs, and profit) and materials (at cost).

Time Delay - An interruption during which services, supplies, or work are not delivered in accordance with the performance time schedule stated in the contract.

CHAPTER 4. ETHICS IN PUBLIC CONTRACTING

Note: Citations contained in the handbook have been moved from 24 CFR Parts 84 and 85 to 2 CFR Part 200.

4.1 General

Ethical standards apply not only to PHA employees and Contracting Officers but to others with a vested interest in PHA contracts such as members of the Board of Commissioners, other officials and agents of the authority, and contractors with whom the PHA does business.

This chapter explains the specific ethical requirements for PHA contracting 24 CFR 85.36 (b)(3).

4.2 Principles

Members of the Board of Commissioners, PHA employees, and any others serving in an official position or acting as an agent of the PHA (hereafter referred to as employees, officers, or agents) must discharge their duties impartially to ensure fair competitive access to procurement opportunities by responsible contractors. Moreover, employees, officers, and agents should conduct themselves in such a manner as to foster the public's confidence in the integrity of the PHA procurement organization and process. Any attempt to realize personal gain through PHA employment or to serve as an officer or agent of the PHA through actions inconsistent with the proper discharge of duties is a breach of public trust.

4.3 Requirement for a Written Code of Standards (24 CFR 85.36(b)(3))

PHAs must maintain a written code of standards governing the performance of their employees engaged in the award and administration of contracts. These standards shall be included in the PHA's procurement policy.

4.4 Conflicts of Interest (24 CFR 85.36(b)(3) and Section 19 of the ACC)

PHAs must observe the following conflict of interest prohibitions.

A. No PHA employee, officer, or agent shall participate in the selection, award or administration of a contract supported by Federal funds if a conflict of interest, financial or otherwise, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

B. In addition to any other applicable conflict of interest requirements, neither the PHA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under the ACC in which any of the following classes of people have an interest, direct or indirect, during his or her tenure or for one year thereafter:

1. Any present or former member or officer of the governing body of the PHA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the PHA or a business entity.
2. Any employee of the PHA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.
3. Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of the PHA.
(Note: For additional important provisions see Section 19 of the ACC)

C. No present or former PHA employee, officer, or agent shall engage in selling or attempting to sell supplies, services, or construction to the PHA for one year following the date such employment ceased (see Sections 515 of the old ACC, form HUD-53011, dated 11/69, and Section 19 of the new ACC, form HUD-53012A, dated 7/95). The term “sell” means signing a bid or proposal, negotiating a contract, contacting any PHA employee, officer, or agent for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.

4.5 Gratuities, Kickbacks, and Use of Confidential In-formation

PHA solicitations and contracts above the Federal small purchase threshold shall include clauses advising prospective contractors of the prohibitions against gratuities and kickbacks (24 CFR 85.36(i)(4)). These rules are designed to protect the integrity of the procurement system and to ensure that contracts are awarded fairly, based on merit, without improper influence.

A. **Gratuities (24 CFR 85.36(b)(3) and Section 19 of the ACC).** PHA officers, current employees, former employees within one year of employment, or agents shall neither solicit, accept, or agree to accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. PHAs may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. These rules shall be incorporated in the PHA’s Procurement Policy.

B. **Kickbacks and Anticompetitive Practices.** It is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a contractor or subcontractor under contract to the prime contractor, higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontractor order.

The Contracting Officer shall report to the Executive Director, the HUD Field Office, and the appropriate State and local officials any suspected anticompetitive practices by contractors.

C. **Use of Confidential Information.** Disclosure of confidential information to any person not authorized by the Contracting Officer to receive such information shall be a breach of the ethical standards. Confidential information includes but is not necessarily limited to: the contents of a bid (prior to bid opening) or proposal (prior to contract award using competitive proposals), names of individuals or firms that submitted bids (prior to bid opening) or proposals (prior to contract award); PHA-generated information related to a procurement (including PHA cost estimates, contractor selection and evaluation plans, specifications [before solicitation is issued]); and any other information the disclosure of which would have a direct bearing upon the contract award or the competitive process. It is a breach of ethical conduct for any current or former employee, officer, or agent to knowingly use confidential information for actual or anticipated personal gain or for actual or anticipated personal gain of any other person.

4.6 Prohibition Against Contingent Fees (24 CFR 85.36(c) and (24 CFR 85.36(b)(8))

It is a breach of ethical conduct for a person to be retained to solicit or secure a PHA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or a bona fide agency established for the purpose of securing business. This prohibition includes the employment of former PHA officials and employees on a contingency basis to obtain contracts with the PHA by a business seeking PHA contracts. Many States also have specific laws against contingent fees.

4.7 Sanctions (24 CFR 85.36(b)(11) and (12))

The Executive Director and the Board of Commissioners are responsible for establishing sanctions for violation of the ethical standards. As stated previously, many States have passed laws governing the conduct of officials involved in procurement. All such laws shall be enforced by the Executive Director and, in cases where the State or local government has no such rules, appropriate sanctions for violation of the standards of conduct in this Chapter shall be published and imposed.

Civil and administrative remedies should be established for use whenever employees, officials, or agents breach ethical standards. References to State ethics laws, which should be consulted by the PHA in developing and administering sanctions for misconduct, should be included in the Procurement Policy. In addition, the PHA may impose any one or more of the following:

Oral or written warnings or reprimands;

Suspension with or without pay for specified period of time;

Termination of employment; or

Dismissal from the official or agency position.

The value of anything received by an employee or a non-employee in breach of the ethical standards shall be recoverable by the PHA either by confiscating the items or by charging the violator for any and all gratuities received. All procedures in this Chapter shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided before imposing any suspension or termination of employment. Remedies against contractors may include suspension and/or debarment, as provided in Chapter 11, Contracts, Contract Clauses, and Contract Administration.

In the case of violations, HUD may exercise any available remedy under the ACC, the federal regulation and statutes, and grant agreements including the U.S. Housing Act of 1937 as amended, **24 CFR Parts 84** and **85,** and sections 17 and 19 of the ACC.

CHAPTER 9 Demonstration Programs: Rental Assistance Demonstration & Moving to Work

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Understand the relationship between the Capital Fund Program and two of HUD's demonstration programs, Rental Assistance Demonstration (RAD) and Moving to Work (MTW)

Section 1 Rental Assistance Demonstration (RAD)

RAD was initially authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. 112-55) (RAD Statute), which authorized HUD to allow PHAs throughout the nation to elect to convert up to 60,000 public housing units to one of two forms of long-term, project-based Section 8 assistance - Project-Based Rental Assistance (i.e., Multifamily Section 8 or PBRA) or Project-Based Vouchers (PBV).

Program rules and requirements are contained in PIH-2019-23. Currently, Congress has authorized HUD to allow PHAs to convert up to 455,000 public housing units. Updated information about the RAD program may be found at the RAD Resource Desk website, which is located at www.radresource.net.

Following the approval of a RAD application, HUD issues a Commitment to Enter into a Housing Assistance Payments Contract (CHAP), that describes the terms under which HUD will enter into a HAP contract with the project owner (for multiphase or portfolio applications, HUD issues CHAPs for the approved RAD applications and award letters reserving the conversion authority for the remainder of the projects).

The following public housing requirements apply to capital funds used for RAD conversions:

- **Procurement**. Public housing program funds spent prior to the effective date of the RAD conversion are subject to public housing requirements including procurement rules at 2 CFR Part 200. However, after RAD conversion (transfer of public housing assistance to Section 8), capital funds may not be used for Section 8 RAD purposes.
- **Obligation and Expenditure Deadlines**. PHAs may apply for an extension, up to five years, to the obligation end date (OED) applicable to the Capital Fund grants used in a RAD conversion. Upon extending the OED, HUD will extend the expenditure end date by a corresponding period.
- **Faircloth Limit**. RAD conversions decrease the number of units in a PHA's Faircloth limit.

Once a public housing property's assistance is converted to Section 8 under RAD, the PHA will no longer receive capital funds, including RHF and DDTF funds, for those properties after the initial year of conversion.

Procedure for RAD Conversion

- A PHA submits an application to the Office of Affordable Housing Programs (OAHP) at headquarters.
- Applications require information on project background and an estimate of capital needs (if a rehabilitation), future operating expenses, and proposed financing. OAHP reviews each application for completeness and financial feasibility.
- Application reviewers work with the applicable field office for background on PHA capacity and the Office of Fair Housing and Equal Opportunity and the Office of Inspector General for information on outstanding findings.
- Upon its approval of the RAD application, HUD issues the CHAP to the PHA, as described above.

Conversion of a project pursuant to RAD is considered a significant amendment to the 5-Year Action Plan. Thus, PHAs must follow the requirements regarding the submission of the Significant Amendment to HUD. In addition to disclosures required under 24 CFR Part 903, Attachment 1D to the RAD Notice requires a PHA to make the following disclosures:

- That current and future Capital Fund grants will be reduced as a result of any properties converting under RAD.
- An estimate of the amount of the current Capital Fund grant that is associated with the proposed project(s) and the impact on the PHA's current 5-Year Action Plan.
- If the RAD conversion will impact an existing CFFP or use RHF funds to facilitate conversion, the estimated impact of those activities.

The CNA is similar to the Physical Needs Assessment, but is not identical, and is used for a different purpose. The CNA identifies repairs that must be addressed through a RAD conversion. The PNA is a comprehensive assessment of the capital improvement needs of a PHA's public housing project.

Additional RAD Interactions with the Capital Fund

PHAs may use public housing funds to support predevelopment costs associated with the RAD conversion. Before HUD's execution of the RAD Conversion Commitment (RCC) for a project, a PHA may expend up to $100,000 in capital funds on materials and services (provided 2 CFR Part 200 is followed as to the procurement of these materials and services) related to the project's development and preliminary development work. Headquarters' execution of the RCC constitutes approval for the PHA to expend additional Capital Funds on predevelopment costs.

Capital Funds Uses for RAD

During the preconversion period (before RAD conversion closing), the PHA has several options for use of its existing capital funds. PHAs may use capital funds preconversion for modernization activities at the public housing projects that are proposed for RAD conversion.

BLI 1503 and BLI 1504 are used in RAD conversions; funds in those BLIs may be drawn down to fund post-conversion activities as well. After the final closing conversion (in which the PHA will convert all of its public housing), a PHA will not be able to draw down capital funds from any budget line item other than BLI 1503 and 1504. However, it may continue to use those former capital funds, now Section 8 funds, in BLI 1503 and 1504 for construction or rehabilitation as part of the RAD conversion, as approved by headquarters in the RAD Conversion Commitment and related closing documents.

In order for a PHA to use all or a portion of a specific Capital Fund grant as a part of the RAD conversion, the PHA must prepare an amended Capital Fund budget for the annual grant in question. If the budget revision does not constitute a significant amendment, the PHA can prepare the revised budget, moving the required unobligated and unexpended funds from other BLIs to BLI 1503 and 1504 and identifying the individual RAD construction or rehabilitation work items.

The revised budget must be signed by the Executive Director. Once the Executive Director has signed the revised budget, the PHA must provide a copy of the revised budget to the field office for entry into LOCCS.

In a conversion where the PHA will not convert all of its public housing units, the PHA may decide to retain capital funds for the units that will remain in its inventory and may allocate a portion to the RAD conversion. The PHA should submit a budget revision to HUD requesting transfer of the capital funds that it wishes to use for the RAD Units to BLI 1503 and 1504. The PHA should retain the remaining capital funds in the appropriate BLIs.

Headquarters

Issuance of an executed RAD Use Agreement (currently Form HUD-52625) constitutes approval for the PHA to expend any additional capital funds converted to Section 8 funds as authorized for development or rehabilitation activities identified in the RCC.

Financing Plan

The financing plan includes documentation demonstrating that the covered project will be sustained physically and financially for the term of the HAP contract at the rent levels permitted under RAD, including the means by which the project's immediate and long- term capital needs, if any, will be addressed. At the point a PHA has submitted its financing plan, the specific development sources, including capital funds, including RHF funds, are known. Once approved, HUD issues a RCC that describes the terms and conditions of the conversion.

Closing

Closing (and thus the conversion) typically occurs one to three months after issuance of the RCC. At closing:

- The PHA certifies that it will remove the designated number of units from IMS/PIC
- The HAP Contract is executed by (1) the project's Owner Entity and HUD for PBRA conversions and (2) the project's Owner Entity and voucher-administering PHA for PBV conversion
- Headquarters releases the Declaration of Trust as to the converting public housing property, and the PHA records the RAD Use Agreement on the covered property
- PHA and other parties execute and record any debt and/or equity financing documents.

Note: At closing, any capital funds, including RHF funds, that are approved in the financing plan are considered obligated and expended.

Section 2 Moving to Work (MTW)

MTW is a demonstration program authorized by Congress in 1996 for the purpose of giving PHAs and HUD the flexibility to design and test various approaches for providing and administering housing assistance that:

1. Reduce cost and achieve greater cost effectiveness in federal expenditures
2. Give work incentives to families to promote self-sufficiency
3. Increase housing choices for low-income families

To achieve these goals, participating PHAs are authorized to combine certain funds from HUD, as described below. In addition, HUD may waive provisions of the 1937 Act and regulations under it, except for (a) requirements under Section 18 of the 1937 Act relating to demolition and disposition of public housing and (b) the provisions of Section 12 of the 1937 Act relating to labor standards and community service and (c) Fair Housing and civil rights obligations.

MTW Agreements

Each MTW PHA enters into an MTW Agreement with HUD (consisting of the Standard MTW Agreement and a set of attachments). The MTW Agreement permits the PHA to combine capital funds with operating funds and Section 8 voucher funds for purposes described in the MTW Agreement and the approved Annual MTW Plan. Those purposes supersede the eligible activities for capital funds (including RHF funds) provided in the CFP Final Rule. The MTW Agreement also amends and supersedes the PHA's underlying ACC(s) with HUD and includes the waivers and alternative requirements which the PHA is subject to during its MTW participation. The MTW Agreement includes the following attachments:

- **Attachment A**, which sets forth the funding provisions for Operating Funds, Capital Funds, and Section 8 voucher funds during the demonstration. These provisions supersede and may alter the standard funding formulas as applied to the MTW PHA.

- **Attachment B**, which provides the requirements for planning and reporting to HUD during the demonstration.
- **Attachment C**, which describes the waivers from provisions of the 1937 Act and HUD regulations during the demonstration. Attachment C is the same for all MTW PHAs.
- **Attachment D**, which describes the waivers that are specific to each MTW PHA during the demonstration

PLANNING REQUIREMENTS

Requirements regarding planning, annual submission, and distribution of funds for MTW PHAs are in the MTW Standard Agreement and related guidance issued by MTW program staff within the Office of Public Housing Investments (OPHI) at Headquarters. They differ from the requirements applicable to non-MTW PHAs.

RHF AND DDTF

Some MTW PHAs have amendments to their MTW Agreements regarding expanded allowable uses of RHF funds. MTW PHAs with RHF amendments in place may continue to abide by the terms of those amendments, as approved in the Annual MTW Plan, for current First Increment RHF or Second Increment RHF grants. Upon receipt of DDTF funding by an MTW PHA, the RHF amendment will cease to be necessary because DDTF will not be a separate grant and will instead take the form of capital funds. An MTW PHA with funding flexibility that expends First Increment RHF funds on activities that do not meet the RHF standards, will forgo eligibility for Second Increment RHF funds, unless the PHA uses the First Increment RHF funds for the construction of new affordable housing units (per Option 3 of the RHF MTW Amendment).

Capital Fund Submission

24 CFR §905.300(b)(9)

In place of the Capital Fund submission described in Chapter 3, MTW PHAs make their Capital Fund Submissions as part of their MTW Plans annually, in accordance with the standard MTW agreement. This differs from the decoupling of the Capital Fund Submissions from the PHA 5-Year and Annual Plans for non-MTW PHAs. For MTW PHAs, the Capital Fund Submissions remain part of the Annual MTW Plan, with the exception of the ACC Amendment(s).

Obligation and Expenditure Deadlines

MTW does not waive the obligation end date and expenditure end date requirements, as further described in Chapter 8, and MTW PHAs must comply with the provisions of Section 9(j) of the 1937 Act and 24 CFR §905.306. MTW PHAs that fail to comply with those requirements will incur the penalties applicable to non-MTW PHAs.

Section 3 Chapter 9 Post-Test

1. In order to be a selected as a MTW agency, the agency must:
    a. Be a high performer under PHAS and SEMAP
    b. Have at least 1000 units of public housing
    c. Be willing to attend five meetings at HUD headquarters each year.
    d. All of the above.
2. If a PHA decides to convert only a portion of its public housing under RAD, the PHA may not use any of its Capital Fund for RAD conversion activities.
    a. True
    b. False
3. Any RAD conversion of public housing units decreases the unit count under the PHA's Faircloth limitation.
    a. True
    b. False
4. The MTW program's three goals include:
    a. Decreasing costs and improving effectiveness of Federal housing funds.
    b. Promoting self sufficiency for PHA clients.
    c. Making it easier for a PHA to operate its programs.
    d. Increasing housing opportunities for low income households.
    e. A, B, and D
    f. All of the above

5. Each MTW agency executes an agreement with HUD. Part of the agreement is applicable to all MTW agencies and part of the agreement includes exhibits with different terms and conditions specific to each agency.
   a. True
   b. False
6. An MTW agency submits its Capital Fund Plan as part of its annual MTW Plan.
   a. True
   b. False

CHAPTER 10 Compliance, Penalties, and Sanctions

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize the final rule's directives for compliance, possible penalties, and sanctions.

Section 1 Introduction

Part 800, Subpart H, 905.800-804 covers compliance, HUD review, penalties and sanctions.

The final rule clarifies minimum performance review standards and lists possible noncompliance sanctions

Section 2 Compliance

PHAs or other owner/management entities and their partners are required to comply with all applicable provisions of this part.

Execution of the CF ACC Amendment, receipt of required submissions, and disbursement of CF grants from HUD are individually and collectively deemed to be the PHA's certification that it is in compliance.

Noncompliance with any provision of this part or other applicable requirements may subject the PHA and/or its partners to sanctions contained in § 905.804.

Examples of noncompliance can include:

- Untimely certification of IMS/PIC data
- Inactive DUNS number
- Failure to get or submit a board resolution approving a five year action plan
- Late Capital Fund submissions
- Incomplete environmental reviews
- Noncompliance with procurement requirements

Section 3 HUD Review of PHA Performance

HUD will review the PHA's performance in completing work in accordance with this part and may make other reviews when and as determined necessary.

During the review, HUD will, at minimum, assess whether the PHA has:

- Carried out its activities under this part in a timely manner and in accordance with its CFP 5-Year Action Plan;
- The capacity to carry out its Capital Fund activities in a timely manner;
- Accurately reported its obligation and expenditures in a timely manner;
- Accurately reported required building and unit data for the calculation of the formula; and
- Obtained approval for any CFFP or OFFP proposal and any PHA development proposal.

Section 4 Sanctions

Sanctions associated with failure to obligate or expend in a timely manner are specified at §905.306.

- *Obligation.* A PHA must obligate each Capital Fund grant, including formula grants, Replacement Housing Factor (RHF) grants, Demolition and Disposition Transitional Funding (DDTF) grants, and natural disaster grants, no later than 24 months after, and emergency grants no later than 12 months after, the date on which the funds become available to the PHA for obligation, except as provided in the rule for HUD-approved extensions.
- *Expenditure.* The PHA must expend all grant funds, except for emergency grants, within 48 months after the date on which funds become available. The PHA must expend all emergency grant funds within 24 months after the funds become available. The deadline to expend funds may be extended only by HUD approval.

Other possible noncompliance sanctions may include, but are not limited to:

- Issue a corrective action order.
- Require reimbursement from non-HUD sources.
- Limit, withhold, reduce, or terminate Capital Fund or Operating Fund assistance.
- Issue a Limited Denial of Participation or Debar responsible PHA officials.
- Withhold assistance to the PHA under section 8 of the Act, 42 U.S.C. 1437f.
- Declare a breach of the CF ACC with respect to some or all of the PHA's functions.

CHAPTER 11 Case Study: If Only I Had A Million Bucks

DIRECTIONS

- The following case study has been developed based upon incidents which have actually occurred at some PHAs. There are questions at the end of this case study which you and your group members will answer by using the information presented in the preceding sections, and by drawing upon your own experience with situations like the one described below.
- You will have 30 minutes to read this case; and another 15 to 20 minutes to discuss it with your group members. You and your group are responsible for coming up with possible answers to the questions at the end. Write down your group's answers on the sheet provided after this case. You may have to make some assumptions to answer the questions. Write down your assumptions so you can justify your answers.
- Your answers will be presented to the class and discussed by the class.

SITUATION

- High Desert HA, near Ourtown, California has both desert and mountainous areas. The climate is very hot in the summer, and the winter has moderate to cold temperatures depending on where you are in the county. Snow is possible in the mountains but has rarely occurred in the past few years.
- The PHA is responsible for 217 scattered-site housing units (123 are house rentals, five are 4-unit apartment rentals, and 74 houses are homeownership). The maintenance department is responsible for homeownership houses. The maintenance department has one supervisor, two full-time maintenance mechanics (one of whom is a backup HQS inspector if needed), and one part-time maintenance aide. Additionally, there is a modernization construction staff consisting of four members. Currently the modernization staff is working on modernizing 15 houses in the southern part of the county. Current modernization work is being done through Force Account Labor.
- In the past three years, the county board of commissioners has voted to remove the past two executive directors (EDs) because they thought that they were ineffective. Unfortunately, this turnover in EDs has caused the PHA to become somewhat disorganized. Staff seems to be putting their problems on the back burner until they are sure that the board will not fire another ED.
- Without question, High Desert needs an ED who is a strong leader, and who can gain funding for recurring maintenance requirements/problems and modernization improvements.
- They say that three's a charm, so the board of commissioners and PHA's staff expectations are high and results are needed from the new ED, Marianne Reno. She is High Desert's first female ED, and she means business. This is why the board hired her – to get things done.

- First on her agenda is maintenance and modernization. Previous EDs made all modernization planning decisions with little input from staff.
- Current maintenance and modernization details:
    1. Current REAC physical score average for all units is 75.
    2. Capital Fund: For previous years' capital grant funding there is 12 months left to obligate $25,000 and two years to expend a total of $45,000
    3. No preventive maintenance program.
- The maintenance department has felt the crunch and has barely been getting by on its annual operating budget. The staff is seeing the same major maintenance problems reoccur, and they could use some basic supervisory improvements as well.
- Harland Alvarez, also known as “Huck,” is High Desert's maintenance supervisor. He has been with the authority for 15 years. He supervises and directs all maintenance operations and modernization staff. He is thrilled that Ms. Reno's top priority is maintenance and modernization, and he is looking forward to meeting with her at the end of the week.
- Approximately two weeks ago, Ms. Reno contacted Huck to arrange a meeting so she could be briefed on the status of the maintenance/modernization department and to ask for his input for this year's modernization planning. She said, “Since you and your staff have daily contact with the PHA's maintenance work load and maintenance-related problems, your expertise in maintenance management and maintenance systems will be a big help in developing, and justifying, the modernization funding request.” Huck was pleased because this was the first time anyone had asked for his input. He called a meeting with his staff the next day.
- The staff assembled and Huck told them what Ms. Reno asked him to do. Huck briefed his staff on modernization planning. The staff's reaction was “What does that have to do with us?” Huck explained that he wanted their input, too. “You guys are out there every day, right in the mix of things. I'm sure you all know what's going wrong, how often, and have great ideas for improving things.” The staff nodded and agreed to discuss what they thought were problems.

- For the next three days, the staff came in an hour early or stayed an hour late to identify recurring maintenance problems, places where modernization is needed, and management improvements for their own department's operation. Huck thought the sessions went great. Suggestions were flying everywhere.
  - "All the plumbing needs to be replaced; the acidity of the soil is eating straight through all our underground pipes. We need something better."
  - "I'm so tired of fixing holes in doors! The doors they put in these houses are like paper. You end up fixing the same door two and three times a year."
  - "I wish we could keep better track of our inventory. You think you have a part. You tell the resident that the problem will be fixed by the next day and when you get back to the shop, the part you need is out. Then it's a special trip to the hardware store in our town, which is usually a 25 to 30-minute drive."
  - "I've seen a lot of cracks in the kitchen and bathroom floor tile in the houses in the River Run area. We keep having to replace tiles and I'm not sure why. Maybe the floors should be replaced altogether. Most are 20 years old."
  - "Our trucks are on their last leg with all the driving we have to do. Just last week Ed broke down on his way up Sunset Mountain. Denny had to stop his job in Grande River because he had to go get him and a tow truck."
  - "It really frustrates me that we have to board up all the windows in a vacant house until the next resident moves in. This vandalism is getting out of control. We should use those heavy-duty screens like they use at the Big Valley HA. That would stop those punks from breaking the glass and ripping the screens apart."
- In total, Huck and the staff came up with 21 items that they thought were important. (See the following list called "Huck's List of Problems and Requests").
- Once Huck and the staff finalized the list, it was ready for the meeting with Ms. Reno. The meeting with Ms. Reno took place three days later, and was going along well until they got to Huck's list. Ms. Reno was a little annoyed when Huck handed it to her. "This looks like a complete wish list. Take it back and prioritize it."
- Huck was puzzled by her reaction because he and his staff had put so much time into this, and she thought it was a "wish list." Huck walked back to his office, clearly concerned that he did not make a good impression by thought to himself, "These are problems that keep recurring and are keeping us from doing our job effectively. I did what she asked."

Huck's List of Problems and Requests

1. New underground pipes for the houses in Grande River, River Run, and Poco Run.
2. New tile floors in the kitchens and bathrooms in the Grande River, River Run, and Poco Run houses.
3. Two new maintenance trucks that carry inventory.
4. Replace all doors with sturdier construction doors.
5. Computerized work order and inventory tracking system.
6. Small satellite storage facilities in remote regions of the county.
7. New sturdier screens for all houses.
8. Replace the swamp coolers with air conditioners at all sites.
9. New walkie-talkies for the maintenance department.
10. Car ports for the houses in Grand River and River Run.
11. Outside storage sheds for the houses in River Run, Poco Run, and Tulupo Valley.
12. Eight houses in Tulupo Valley need new light fixtures in the kitchens.
13. All of the houses in River Run need the light switches in the bathrooms replaced.
14. Contract for regular extermination visits.
15. All Tulupo Valley houses need new roofs by next winter.
16. Maintenance Workshop to conduct major repairs; need more space.
17. New masonry tools for plastering.
18. The five 4-unit-rentals need interior and exterior painting.
19. All plumbing needs to be standardized.
20. Three houses in Poco Run have rotted windows that need replaced also 15 windows in Tulupo Valley.
21. Grande River houses all need plastering work in the basement.

QUESTIONS

1. What do you think about Huck's list?

2. With some items, would you need to gather more facts in order to prioritize? What would those facts be?

3. If your PHA had these same problems, how would you develop the list of problems and requests? Which items would you consider for your CFP 5-Year Action Plan? Which would be in your preventive maintenance plan? What items are more suitable for your routine maintenance? Lastly, which items might be considered for an Energy Performance Contract (EPC)? These categories, of course, are not all mutually exclusive. For example, an EPC item will also be on your CFP 5-Year Action Plan, and some of your preventive maintenance items will also be on your CFP 5-Year Action Plan.

4. Using your own PHA, develop a list of problems and/or requests you believe modernization funding could be dedicated to, then write a justification for the problem or request.

Notes

CHAPTER 12 Answers to Post-Tests

CHAPTER 1: INTRODUCTION

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CHAPTER 2: ELIGIBLE AND INELIGIBLE ACTIVITIES AND COSTS

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CHAPTER 7: PHAS AND THE CAPITAL FUND

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CHAPTER 13 References

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Office of Public and Indian Housing, Real Estate Assessment Center

PIH-REAC: PHA-Finance Accounting Briefs

Issued Date: August 2011

Capital Fund Program Reporting
ACCOUNTING BRIEF #15

GOVERNING REGULATIONS AND GUIDANCE

1. U.S. Housing Act of 1937, 42 U.S.C. 1437g, Public Housing Capital and Operating Funds, 9(d) Capital Fund and 9(g) Limitations on Use of Funds.
2. 24 CFR Part 968 – Public Housing Modernization.
3. 24 CFR Part 5 – Subpart H Uniform Financial Reporting Standards.
4. Changes in Financial Management and Reporting for Public Housing Agencies Under the New Operating Fund Rule (24 CFR part 990), Supplement to HUD Handbook 7475.1 REV, CHG-1, Financial Management Handbook.

BACKGROUND

The Public Housing Capital Fund Program (CFP) provides funds for capital and management activities of public housing agencies (PHAs), including the modernization and development of public housing. The amount of CFP funds that the PHAs receive each year is based on a funding formula established through regulation at 24 CFR Part 905. PHAs plan for how CFP funds will be spent by developing a five year plan and an annual plan, using budget line items (BLI). CFP funds are drawn down by PHAs using HUD's electronic Line of Credit Control System (eLOCCS) by BLI. In addition, PHAs use eLOCCS to report the status of CFP funds obligated and expended by BLI.

This accounting brief provides information on the proper reporting of common CFP activities on the Financial Data Schedule (FDS). Specifically, this brief provides reporting guidance on the following specific topics:

1. Beginning equity (Page 3);
2. BLI accounts related to hard costs and FDS reporting (Pages 3-5);
3. BLI accounts related to soft costs and FDS reporting (Pages 5-8) such as;
    - Transfers to the Operating Fund for Operations (BLI 1406);
    - Management Improvement (BLI 1408);
    - Administration/Capital Fund Management Fee (BLI 1410); and
    - CFP Audit Costs (BLI 1411);
4. Other CFP activities not separately captured in BLI accounts (Pages 8-9) such as;
    - Force Account Labor;
    - Modernization Coordinators;
    - PHA Modernization Inspectors and Construction Supervisors; and
    - Replacement Housing Factor Fund (RHF);

5. Capital Fund Financing Program (CFFP) (Pages 9-11);
6. Central Office Cost Center and the Capital Fund (Page 11); and
7. Federal Awards Expended (Page 11).

General Financial Data Schedule (FDS) Reporting

On the FDS and in their respective financial statements, PHAs are required to report activities funded from the CFP in accordance with generally accepted accounting principles (GAAP). PHAs that administer the CFP are typically governmental in nature and provide their annual financial reports using the proprietary fund model which uses full accrual accounting. Therefore this accounting brief will focus on financial reporting as promulgated by the Government Accounting Standards Board under full accrual accounting.

CFP activity is normally associated with the PHA's projects and as such must be reported on the FDS at the project level (i.e. there is no longer a separate Capital Fund program column on the FDS, with its own CFDA number).

For FDS reporting each project has:

- One balance sheet that combines the financial activity of both the Low Rent Public Housing Program and the CFP program; and
- Two income statements – one statement that reports the Low Rent Public Housing financial activity and another statement that reports the CFP's financial activity. These two income statements, when combined, are referred to as the Project's income statement.

HUD considers the CFP program an expenditure driven grant program. That is, revenue recognition occurs when an eligible CFP expense is incurred by the PHA. For FDS and financial statement reporting CFP grant revenue is booked when the eligible expense occurs. Grant revenue is not dependent upon either the receipt of cash from HUD or the PHA's request for payment by HUD. Revenue recognized (earned) but not yet received should be reported as an accounts receivable from HUD in FDS line 122 (Accounts Receivable – HUD Other Projects).

Capital Fund Program financial transactions are typically reported in one of two categories. These categories are widely referred to in the industry as "hard" and "soft" costs. GAAP reporting requires these "hard costs" (non-operating activity) and "soft costs" (operating activity) to be reported separately. HUD needs this level of detail for PHA assessments and proper financial analysis. ***Hard costs*** typically refer to activities associated with the purchase of equipment, modernization work and other capital activity. Other capital activity refers to items that meet the PHA's capitalization threshold policy and thus must be recorded on the balance sheet according to GAAP. ***Soft costs*** refer to the use of CFP funds to either support a project's operation or other expenses that do not meet the PHA's capitalization threshold policy. For example, if a PHA's threshold policy for capitalization is $1,000, the purchase of a single computer under the PHA's capitalization threshold policy of $900 would be considered a soft cost and shown as an expense.

The FDS requires that PHAs distinguish CFP program revenue used for "hard costs" from revenue used for "soft" costs.

- Amounts drawn down for hard costs (capital expenditures) are reported on FDS Line 70610 (Capital Grants).
- Amounts drawn down for soft costs (expenses) are reported on FDS line 70600 (HUD PHA Operating Grants).

Beginning Equity

Under the project-based asset management model, each project has one balance sheet for which both Low Rent and CFP activities of the project are reported. For a project, FDS Line 11030 (Beginning Equity) in the Low Rent Public Housing income statement will be pre-populated with last year's ending equity. However, PHAs should reclassify the portion of this beginning equity to FDS Line 11030 (Beginning Equity) in the Capital Fund income for the amount associated with the beginning equity of the CFP of the respective project. Additionally, as fixed assets acquired through the CFP are put into service at a project, the transaction should be reported through an equity transfer from the project's CFP Column to the project's Low Rent Column using FDS Line 11040 (Prior Period Adjustments, Equity Transfer, and Correction of Errors) on the respective income statement. This reporting requirement is consistent with PHA's past reporting practices.

The example below illustrates how a PHA should report beginning equity at the project level for each program and an equity transfer for assets purchased with CFP funds that were put into service. In this example, total beginning equity for the project is $850,000 of which $700,000 relates to the Low Rent Program and the remaining $150,000 relates to the CFP. This example also shows the transfer of $100,000 of capital assets funded by the CFP program to the Low Rent Program and assumes that these capital assets were put into service.

Project - Income Statement				
FDS Line Item		Project Total	Low Rent	Capital Fund
11030	Beginning Equity	$850,000	$700,000	$150,000
11040	Prior Period Adjustments, Equity Transfer, and Correction of Errors	$0	$100,000	($100,000)

Hard Costs: BLI Accounts and FDS Reporting

CFP grant revenue recognized for hard costs (capital expenditures) are reported on FDS Line 70610 (Capital Grants). CFP amounts normally reported as hard costs include amounts drawn down from the following budget line item accounts:

- BLI 1440 – Site Acquisition
- BLI 1450 – Site Improvement
- BLI 1460 – Dwelling Structures
- BLI 1465 – Dwelling Equipment, Nonexpendable
- BLI 1470 – Non-Dwelling Structures
- BLI 1475 – Non-Dwelling Equipment

The PHA's capitalization threshold policy will have a final determination on how these BLI amounts are reported on the FDS. Amounts that are below the PHA's capitalization threshold policy are considered soft costs and will be expensed for FDS reporting. CFP grant revenue recognized for soft costs will be reported on FDS line 70600 (HUD PHA Operating Grants).

To report CFP funds used for hard costs, the project's CFP income statement should report grant revenue in FDS Line 70610 (Capital Grants) and increase the affected project's fixed assets accounts on the balance sheet accordingly. The memo accounts in the CFP column should also be completed to show how the CFP funds were used. In the CFP column, the sum of the memorandum accounts (FDS lines 11610 – 11660) plus any CFFP debt principal payments reported on FDS line 11020 should normally match the amount reported on FDS line 70610(Capital Grants).

The example below illustrates how a PHA would report a Project's income statement and balance sheet to reflect the use of CFP funds for Hard Costs. In this example, the PHA purchased $25,000 of equipment associated with the project units and incurred modernization (capital) costs of $175,000.

Project - Income Statement				
FDS Line	Item	Project Total	Low Rent	Capital Fund
70600	HUD PHA Operating Grants	$0		
70610	Capital Grants	$200,000		$200,000
11620	Building Purchases	$175,000		$175,000
11630	Furniture and Equipment - Dwelling Purchases	$25,000		$25,000

Project - Balance Sheet		
FDS Line	Item	Project Total
162	Buildings	$175,000
163	Furniture, Equipment, & Machinery - Dwellings	$25,000

*For purposes of this example the balance sheet entries above only represent the increase to the accounts, not the balance of the accounts that would normally be reported on a balance sheet.

HUD allows PHAs to report depreciation expense in either the Low Rent or CFP column of the project's income statement.

Architect and Engineering Fees. Other CFP activities such as architect and engineering (A/E) fees, construction supervisor salary and other expenses directly related to a capital project are normally capitalized by the PHA. When capitalized, these activities would be recognized as "hard" costs and the associated CFP grant revenue should also be reported on FDS Line 70610.

Capital Fund Income Statement - Memo Accounts. On the FDS, there are eight memo accounts found at the bottom of the project's CFP income statement that relate to transactions associated with capital activity or specific CFP activity. These memo accounts are intended to provide additional information on the use of these CFP grant awards that were used to support capital expenditures, debt service payments and RHF fund expenditures.

1. FDS Line – 11610 Land Purchase
2. FDS Line – 11620 Building Purchase (includes costs related to Construction in Progress)
3. FDS Line – 11630 Furniture and Equipment – Dwelling Purchases
4. FDS Line – 11640 Furniture and Equipment – Administrative Purchases
5. FDS Line – 11650 Leasehold Improvement Purchases
6. FDS Line – 11660 Infrastructure Purchases
7. FDS Line – 13510 CFFP Debt Service Payments (includes principal and interest)
8. FDS Line – 13901 Replacement Housing Factor Funds (any capitalized costs associated with the use of these funds should also be reported in memo accounts 11610 through 11660 above.)

Soft Costs: BLI Accounts and FDS Reporting

Soft costs are transactions that are expensed on the project's income statement. CFP revenue that is considered a "soft cost" is normally reported on FDS Line 70600 (HUD PHA Operating Grants) in the project's CFP income statement column with a corresponding Operating Transfer Out. However, there are a few types of soft costs that are reported as an expense in the CFP column of the project and are an exception to the general rule.

CFP amounts normally reported as soft costs include amounts drawn down from the following budget line item accounts:

- Transfers to the Operating Fund for Operations (BLI 1406)
- Management Improvement (BLI 1408)
- Administration/Capital Fund Management Fee (BLI 1410)
- CFP Audit Costs (BLI 1411)

The proper reporting of these soft costs transactions is described below.

1. Transfers to the Operating Fund for Operations (BLI 1406)

Funds used for operations (BLI #1406) are recognized as revenue when drawn down by the PHA, regardless of when these funds are actually spent. The PHA would reflect amounts associated with BLI 1406 (Operations) on the FDS as follows:

- The project's CFP income statement should report grant revenue in FDS Line 70600 (HUD PHA Operating Grants) and should also report the same amount in FDS Line 10020 (Operating Transfer Out).
- The project's Low Rent income statement should report the same amount on FDS Line 10010 (Operating Transfer In) with a corresponding increase in the project's cash balance reported on Line 111 (Cash Unrestricted).

The example below illustrates how a PHA would report the use of CFP for operations on a Project income statement and balance sheet. In this example, the project drew down $200,000 of its CFP grant to support the project's operations.

Project - Income Statement				
FDS Line Item		Project Total	Low Rent	Capital Fund
70600	HUD PHA Operating Grants	$200,000		$200,000
70610	Capital Grants			
10010	Operating Transfer In	$200,000	$200,000	
10020	Operating Transfer Out	($200,000)		($200,000)

Project - Balance Sheet		
FDS Line Item		Project Total
111	Cash Unrestricted	$200,000

Using the elimination column in the FDS, the PHA should eliminate the operating transfer in and operating transfer out for this transaction.

Under current law, PHAs with less than 250 public housing units that are not troubled can transfer up to 100% of their CFP to operations. PHAs with 250 or more public housing units are only allowed to transfer up to 20% of their CFP to operations. Once CFP amounts are transferred to "Operations" these funds lose their distinction as CFP funds and may be used for any eligible "Operating Fund" activity of the project.

2. Management Improvement (BLI 1408)

Similar to the treatment of BLI 1406 (Operating Transfers), in order to report the use of CFP funds for Management Improvements (BLI 1408), the PHA should expense the amounts spent on Management Improvements that are soft costs within the Low Rent column of the project incurring the expense. The PHA should reflect amounts associated with BLI 1408 (Management Improvements) for soft cost on the FDS as follows:

- The project's Capital Fund income statement should report grant revenue in FDS Line 70600 (HUD PHA Operating Grants) and should report the same amount in FDS Line 10020 (Operating Transfer Out).
- The project's Low Rent income statement should report the same amount on FDS Line (Operating Transfer In) with a corresponding expense.

Unlike BLI 1406, management improvements must be supported directly by an eligible management improvement expense. The FDS expense line(s) used to report the expense is dependent upon the nature of the expense. For FDS reporting, the management improvement expense is not differentiated in any way from other expenses reported in the Low Rent income statement of the project.

To the extent that Management Improvements are capitalized, these amounts should be treated as hard costs. The project's Capital Fund income statement should report grant revenue in FDS Line 70610 (Capital Grants) and increase the affected project's fixed assets accounts on the balance sheet accordingly. The memo accounts in the Capital Fund column should also be completed to reflect the use of the CFP funds.

Management improvements are currently limited by regulation to 20 percent of the Capital Fund grant award.

3. Administration/Capital Fund Management Fee (BLI 1410)

BLI 1410 is used to account for eligible administrative costs of the Capital Fund Program. For those PHAs that use fee-for service, this BLI account also reflects the Capital Fund management fee. Regardless of the use (i.e., administrative expense or CFP management fee) this activity is recorded **only** in the project's Capital Fund income statement column.

- Administration Costs. When BLI 1410 is used to support administration costs, the project's Capital Fund income statement should report grant revenue in FDS Line 70600 (HUD PHA Operating Grants) with matching expenses normally reported in the administrative salary and benefits lines of the FDS.

  The example below illustrates how a PHA should report Capital Funds for Administration on a Project's income statement. In this example the PHA incurred $100,000 in administrative costs directly related to the Capital Fund - $70,000 in Salary Expense and $30,000 in Employee Benefits.

Project - Income Statement				
FDS Line Item		Project Total	Low Rent	Capital Fund
70600	HUD PHA Operating Grants	$100,000		$100,000
70610	Capital Grants			
91100	Administrative Salaries	$70,000		$70,000
91500	Employee Benefits	$30,000		$30,000

- Capital Fund Management Fee. In the case where BLI 1410 is used to support the payment of a Capital Fund management fee, the project's Capital Fund income statement should report grant revenue in FDS Line 70600 (HUD PHA Operating Grants) and should report the same amount in FDS Line 91300 (Management Fees).

  The example below illustrates how a PHA should report a Project's income statement relating to the use of Capital Funds for a management fee. In this example, the PHA's COCC charged the projects $100,000 in a Capital Fund management fee.

Project - Income Statement				
FDS Line Item		Project Total	Low Rent	Capital Fund
70600	HUD PHA Operating Grants	$100,000		$100,000
70610	Capital Grants			
91300	Management Fees	$100,000		$100,000

CFP for administration/CFP management fees are currently limited by regulation to 10 percent of the Capital Fund grant award.

4. CFP Audit Costs (BLI 1411)

Audit costs (BLI 1411) associated with the Capital Fund program are eligible costs of the Capital Fund. When Capital Funds are used to pay for CFP audit costs, the project's Capital Fund income statement should report grant revenue in FDS Line 70600 (HUD PHA Operating Grants) and should report the same amount in FDS Line 91200 (Audit Costs). HUD allows the PHA to determine the amount of CFP audit costs reported by a project to be determined by a "reasonable" allocation based on the overall audit cost, the size of the CFP program, project size and other determining factors.

The example below illustrates how a PHA should report Capital Funds for CFP audit costs. In this example the PHA incurred $2,000 of cost associated with the CPA's audit that was related to the Capital Fund Program.

Project - Income Statement				
FDS Line Item		Project Total	Low Rent	Capital Fund
70600	HUD PHA Operating Grants	$2,000		$2,000
70610	Capital Grants			
91200	Auditing Fees	$2,000		$2,000

Other Capital Fund Activities

The following are common activities of the CFP that do not have separate BLI accounts. These activities are:

- Force Account Labor;
- Modernization Coordinators;
- PHA Modernization Inspectors and Construction Supervisors; and
- Replacement Housing Factor Funds (RHF)

1. Force Account Labor

In the context of the Capital Fund, *force account labor* refers to the use of PHA employees to perform capital and modernization work on its projects.

- Capitalized Force Account Labor. To the extent that force account labor is used to support capital works, the cost of such labor is capitalized and becomes an asset on the balance sheet of the project. Force account labor results in a debit (an increase to) to a fixed asset account for the respective amount. From an FDS reporting standpoint, force account labor should be reported in the same way as other hard costs.

- Non-Capitalized Force Account Labor. To the extent that force account labor is used to support capital type work that does not meet a PHA's capitalization threshold the costs of such labor is an expense and is reported similarly to other soft costs (i.e., maintenance expense). HUD PHA grant revenue in the Capital Fund column of the project should be reported with an offsetting Operating Transfer Out. The project's Low Rent income statement should report the same amount on FDS Line 10010 (Operating Transfer In) with a corresponding expense. The exact FDS expense line(s) used to show the expense is dependent upon the nature of the expense (labor, material, contract costs, etc) itself.

2. **Modernization Coordinators**
If the agency employs a "Modernization Coordinator", i.e., an individual(s) responsible for the overall Capital Fund program coordination, including the preparation of Capital Fund plans and program reports, this position is funded through the Capital Fund management fee. In other words, the costs of the modernization coordinator should not appear on the income statement of the project but on the income statement of the COCC.

   Non fee-for-service PHAs should report the Modernization Coordinator's salary and benefits as a direct expense to the Capital Fund program. *(See discussion of BLI 1410 Administration on Page 7).*

3. **PHA Modernization Inspectors and Construction Supervisors**
In contrast to the Modernization Coordinator, the modernization inspector contributes to the capitalized cost of the modernization work that is underway. A PHA can charge to each project (i.e., a capitalized cost) the documented cost of the modernization inspectors/construction supervisors' time and other associated costs directly related to the actual inspection work. These costs, again usually capitalized, will be reflected as hard cost transaction in the Capital Fund income statement of the project – FDS Line 70610 (Capital Grants) and the memo section of the FDS (usually FDS Line 11620). On the project balance sheet typically, the costs associated with this inspector is capitalized to a work in progress (i.e. FDS Line Item 167, Construction in progress) account.

4. **Replacement Housing Factor**
Uses of RHF funds are reported the same as any other Capital Fund transaction, except that the PHA must also report in FDS Line 13901 (Replacement Housing Factor Funds) the total amount of RHF funds used.

Capital Fund Financing Program (CFFP) Reporting

Under the Capital Fund Financing Program (CFFP), a PHA may borrow private capital to make improvements and pledge, subject to the availability of appropriations, a portion of its future annual Capital Funds to make debt service payments from either a bond or conventional bank loan transaction. The loans or bonds are obligations of the PHA. Under this program HUD does not guarantee or ensure these loans or bonds. PHA debt incurred through this program is a legal liability of the PHA.

For FDS reporting the CFFP is now recorded at the project level in the FDS. Specifically,

- Individual project balance sheets will list project debt as a liability.
- The grant revenue associated with the principal and interest payments will also be recorded at the project level.

The section below discusses the relevant transactions associated with the CFFP program and the proper reporting of the following types of transaction on the FDS.

1. Debt Proceeds

When the bond/loan proceeds are received, each benefiting project should report their respective share of the cash proceeds received on FDS Line 112 (Cash – restricted – modernization and development) and/or on FDS Line 132 (Investments – restricted) as appropriate. Each project should also show a liability for these amounts based on the same methodology that was used to determine each projects share of the bond/loan proceeds. This liability should be supported by a debt payment schedule.

- The current portion of the liability should be reported on FDS Line 343-010 (Current Portion of Long-term Debt - Capital Projects / Mortgage Revenue Bonds – CFFP).
- The remaining, long-term portion should be reported on FDS Line 351-010 (Long-term Debt, Net of Current - Capital Projects / Mortgage Revenue Bonds – CFFP).

2. Construction in Progress

During the construction/modernization phase the PHA should book Construction in Progress/Expenses on the project's books when the modernization work begins and through its completion. The majority of the cost associated with the proceeds will be capitalized and should be reported in the Capital Fund income statement memo accounts (FDS Line 11610 through FDS Line 11660). Expenses associated with the use of these proceeds would be reported as an expense in the Capital Fund income statement of the project.

3. Payment of Debt

As the debt becomes payable, the PHA should report interest expense (FDS Line 96710) under the Capital Fund column in the income statement of each project. The same interest expense amount should be booked to HUD PHA operating grant revenue (FDS Line 70600). The PHA should also report revenue in Capital Grants (FDS Line 70610) for the principal payments under the Capital Fund column of each project. The interest expense associated with the CFP grant revenue is considered a soft cost, while principal payments associated with capital grant is considered a hard cost. In addition, the PHA must complete the memo accounts Required Annual Debt Principal Payment (FDS Line 11020) and CFFP Debt Service Payments (FDS Line 13510) to report debt payment amounts under the project's Capital Fund column on the project's income statement.

The example below illustrates the method by which a project should report CFP funds for a debt service payment on the new FDS.

Project Income - Statement				
FDS Line Item		Project Total	Low Rent	Capital Fund
70600	HUD PHA Operating Grants	$20,000		$20,000
70610	Capital Grants	$70,000		$70,000
96710	Interest on Mortgage (or bonds) Payable	$20,000		$20,000
11020	Required Annual Debt Principal Payments	$70,000		$70,000
13510	CFFP Debt Service Payments	$90,000		$90,000

4. Balance Sheet

The project's balance sheet will be adjusted annually to reduce the outstanding principal and to reclassify a portion of the non-current liability to a current liability.

Central Office Cost Center (COCC) and the Capital Fund Program

While the COCC has two income statements similar to that of a project (one statement for operations and one statement for the Capital Fund), except in the following limited cases, CFP funds cannot be used to directly support the COCC. Indirectly, CFP through CFP management fees are used to support COCC expenses. In addition, while the CFP management fee covers costs associated with the COCC's oversight and management of the CFP, for financial reporting purposes, the management fee is treated as fee revenue similar to other types of management fees and is reported in the operations column of the COCC income statement in FDS Line 70710 (Management fees).

The Capital Fund column of the COCC income statement will only be used for limited activities. Recognition of CFP grant revenue as either hard costs or soft costs and the reporting of expenses for the COCC is the same as project reporting. The following are eligible activities or uses of Capital Funds by the COCC:

- <u>Pre-2007 Capital Funds</u>. Pre-2007 (FFY 2006 and prior) Capital Funds that were approved for use under what is now considered a COCC expense are still eligible uses of Capital Funds. The restriction on the use of Capital Funds to fund COCC expense, was effective beginning with CFP grants awarded in 2008 (FFY 2007 CFP grants) and subsequent years.
- <u>CFFP Debt Service Payments</u>. CFFP funding for debt service payments related to the COCC are still eligible costs and can be funded through the CFP program.
- <u>Capital Fund Declaration of Trust</u>. The costs to develop or modernize an existing ACC non-dwelling structure under a 20-year Capital Fund Declaration of Trust (for both ACC and project structures) remains an eligible Capital Fund cost. However, where the non-dwelling structure is assigned to the COCC, any proceeds (office rent charges, community room rentals, etc.) collected from this structure or through the disposal of this structure are considered program income and will be treated as restricted assets for use in the public housing program.
- <u>Non-Dwelling Equipment</u>. CFP funds for non-dwelling equipment may only be used to support the projects. In addition, the CFP funds may not be used to support front-line service needs that continue to be centralized, under a front-line fee-for-service arrangement. The COCC could pay for a COCC vehicle with proceeds from fee income (i.e., a vehicle or computer equipment).

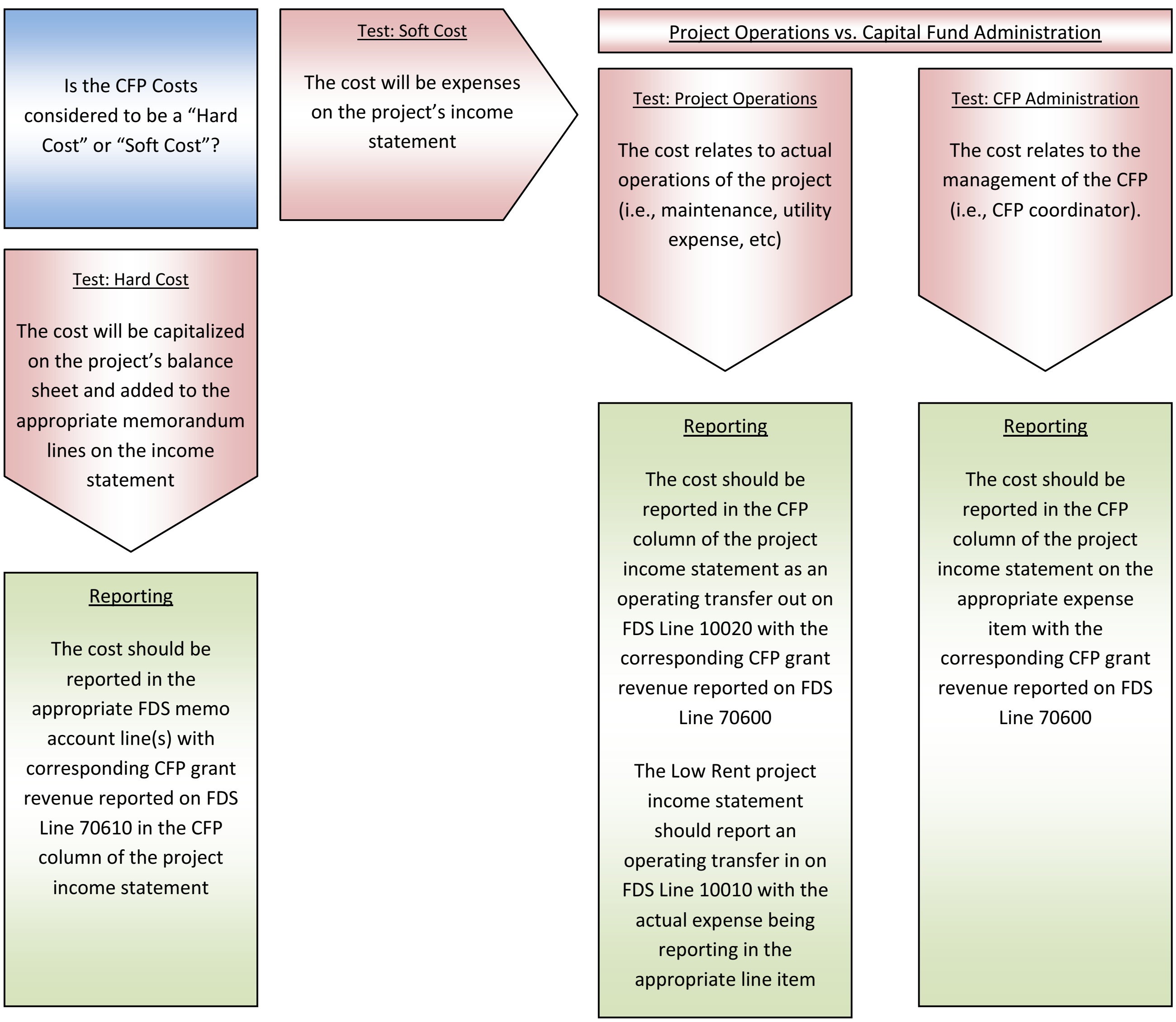
Federal Awards Expended

HUD requires that the PHA report the federal awards expended by federal program on the Data Collection Form in the FASS PH system on FDS line item G4100-030 "Amount Expended". Because the CFP is an expenditure driven grant, the PHA should report all the grant revenue recognized as revenue upon the recognition of the expenditures to be funded from the CFP. This requirement applies to both CFP grant revenue recognized as soft costs (FDS Line 70600) and hard costs (FDS line 70610) for all the projects and the COCC (if applicable). Funds used for operations (BLI #1406) are recognized as revenue when drawn down by the PHA, regardless of when these funds are actually spent.

Hard Cost/Soft Cost Classification Flow Chart

While guidance has been provided as to the specific classification between hard cost and soft cost for many of the common CFP transactions, the following flow chart can be used to help determine the correct reporting for those transactions that have not been addressed in this accounting brief or by other HUD guidance.

Capital Fund Program Cost Reporting Flowchart



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Part III

Department of Housing and Urban Development

24 CFR Parts 903, 905, 941, *et al.*

Public Housing Capital Fund Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 903, 905, 941, 968, and 969

[Docket No. FR–5236–F–02]

RIN–2577–AC50

Public Housing Capital Fund Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule combines and streamlines the former legacy public housing modernization programs, including the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), and the Public Housing Development Program (which encompasses mixed-finance development), into the Capital Fund Program (CFP). This rule defines qualified PHAs, which are not required to file annual plans. The rule expands HUD's current requirement that a Public Housing Authority (PHA) submit a physical needs assessment (PNA) to include small PHAs as well as large PHAs, but provides small PHAs additional time to plan for and implement this requirement. The rule allows PHAs to request a total development cost (TDC) exception for integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency, including green construction and retrofits, which include windows; heating system replacements; wall insulation; site-based generation; advanced energy savings technologies, including renewable energy generation; and other such retrofits. The rule also makes changes to replacement housing factor funds and the threshold for management improvements. Because this rule streamlines programs, several formerly separate regulations are eliminated with the implementation of this rule.

DATES: Effective date: November 25, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 25, 2013.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riddel, Director, Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000; telephone number 202–708–1640 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: This final rule follows a February 7, 2011, proposed rule and makes changes in response to public comment on the proposed rule and further consideration of issues by HUD.

I. Executive Summary

A. Purpose of the Regulatory Action

This final rule implements section 9 of the United States Housing Act of 1937 (the 1937 Act), which created the CFP as part of the Quality Housing and Work Responsibility Act of 1998 (title V, Pub. L. 105–276, approved October 21, 1998). The Capital Fund consolidated the former public housing modernization programs, including the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), and the Public Housing Development Program (which encompasses mixed-finance development). In 2008, the Housing and Economic Responsibility Act (HERA) (Pub. L. 110–289, approved July 30, 2008) made changes to the CFP, namely the removal of the former emergency set-aside for natural disasters and emergencies, and the creation of a category of ''qualified PHAs,'' smaller PHAs that are relieved from certain paperwork submission requirements. To date, there has been no comprehensive regulation implementing these statutory requirements and updates. Thus, rather than a comprehensive, user friendly regulation, PHAs have been required to use annual processing notices to supplement outdated regulations in various parts of title 24 of the Code of Federal Regulations (CFR), including parts 905, 941, and 965.

This regulation is necessary to consolidate the legacy modernization programs in one part of the CFR and to update the regulations in accordance with current law. An updated regulation with current program requirements is needed to provide new staff members with the knowledge necessary to manage the Capital Fund and Mixed Finance Development programs proficiently. In addition, the regulated community needs a single, clear, updated regulation in order to have complete and current information.

The Capital Fund formula itself, currently codified at 24 CFR 905.10, is reorganized at § 905.400. This formula includes a number of coefficients that are to be inserted into the equation. These coefficients are unchanged by this rule. The coefficients were defined as part of a negotiated rulemaking that occurred in 1999 and 2000. The proposed rule can be found at 64 FR 49924 (September 14, 1999) and the final rule can be found at 65 FR 14426 (March 16, 2000).

B. Summary of the Major Provisions of the Regulatory Action

This rulemaking: Establishes a new definition section and proposes several new definitions to be included in the section; clarifies Capital Fund eligible and ineligible activities, and incorporates energy efficiency standards; incorporates into part 905 of public housing modernization the regulations at 24 CFR part 968, which part is removed by this final rule; incorporates the development and mixed-finance development requirements of part 941, which also is removed; expands the requirement for a PNA to include small, as well as large, PHAs (specific requirements pertaining to the PNA will be addressed in a separate rulemaking), but delays the applicability of this provision for small PHAs until 30 days after the end of a federal fiscal year quarter following HUD's publication of a notice in the **Federal Register** announcing application of the provision.

The rulemaking also incorporates by reference the 2009 International Energy Conservation Code (IECC) and American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) standard 90.1–2010, ''Energy Standard for Buildings Except Low-Rise Residential Buildings.'' The ASHRAE standard can be found at *http://www.ashrae.org/standards-research-technology/standards-guidelines*. The 2009 IECC can be purchased at *http://shop.iccsafe.org/*.

This rulemaking also: Clarifies the calculation of TDC limits and establishes the ability for PHAs to request a TDC exception for integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency; establishes 5 years of a Demolition or Disposition Transitional Funding (DDTF) grant that will be included in the regular Capital Fund formula grant, to replace the Replacement Housing Factor (RHF) grant of up to 10 years; provides for a DDTF transition period; clarifies at § 905.202(b) that because of their emergent nature, emergencies that are not identified in the 5-year action plan (statutorily required by section 5A of the 1937 Act) are eligible costs; revises the description of eligible amenities at § 905.202(c); phases in over 5 years a cap of 10 percent of a PHA's Capital

Fund that the PHA may expend on management improvements; and revises the identity of interest regulations in accordance with HUD's actual practice to provide PHAs with the flexibility to use an instrumentality as a general contractor in mixed-finance projects, as long as cost requirements are met, without having to request a waiver.

C. Costs and Benefits

This rule does not have any direct financial impact on the level of funding for the CFP, but has the potential to create some financial transfers among program participants of less than $100 million annually. The rule will cap management improvement expenditures from the Capital Fund at 10 percent, phasing in the cap over 5 years. On average, PHAs use approximately 8 percent of their Capital Fund grants on management improvements, with many PHAs using considerably less, and larger PHAs of more than 250 units using 9 percent. The 10 percent cap would not cause significant transfers outside of the CFP, though the 10 percent cap would require significant expenditure changes for some PHAs that spend a high percentage of their Capital Fund grants on management improvements.

This final rule will also have significant benefits. This rule updates and consolidates the CFP regulations and related regulations having to do with the use of Capital Funds for development and modernization, as well as regulations for continuing operation of low-income housing after completion of debt service. In addition, the rule codifies recent statutory requirements enacted in HERA. The benefits of the rule such as regulatory consolidation, program clarification, removal of obsolete references, and enhanced efficiencies justify the promulgation of this rule.

II. Background

Section 9 of the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437g) is the statutory basis for the Public Housing Capital Fund (Capital Fund) and the Public Housing Operating Fund (Operating Fund). The Operating Fund is established by Section 9(e) of the 1937 Act, and the Capital Fund, which is the focus of this rule, is established by section 9(d) of the 1937 Act (42 U.S.C. 1437g(d)). Section 9(d) lists the various items for which the Capital Fund may be used, including development, modernization, maintenance, vacancy reduction, code compliance, demolition and replacement, homeownership activities, and energy efficiency, among others. Other important provisions found in section 9(d) of the 1937 Act are: The requirement for HUD to develop a formula to determine the amount of Capital Funds that are allocated to PHAs in each fiscal year (42 U.S.C. 1437g(d)(2)); flexibility for a small PHA to use up to 100 percent of its Capital Fund grant and for a large PHA to use up to 20 percent of its Capital Fund grant for purposes ordinarily pertaining to the Operating Fund (section 9(g) of the 1937 Act pertaining to limitation on use of funds; 42 U.S.C. 1437g(g)); and penalties for the slow obligation and expenditure of Capital Funds (section 9(j) of the 1937 Act, 42 U.S.C. 1437g(j). All of these requirements based in statute and others added by regulation constitute the CFP. Additionally, due to changes made to the annual plan statutorily required of PHAs (PHA Annual Plan) by section 5A of the 1937 Act, and the need to have grant reporting in compliance with the requirements of the CFP, and other federal reporting requirements, the CFP informational requirements will be decoupled from the PHA Annual Plan requirements. HUD will make necessary changes to the HUD forms involving the CFP budget and reporting requirements.

Section 2702 of the HERA amended section 5A of the 1937 Act (42 U.S.C. 1437c–1) to provide that certain PHAs, called ''qualified PHAs,'' are not required to file the PHA Annual Plan called for in section 5A(b)(1) of the 1937 Act (42 U.S.C. 1437c–1(b)(1)), although these PHAs, along with nonqualified PHAs, must file the 5-year plan and a civil rights certification required under section 5A(d)(16) of the 1937 Act, 42 U.S.C. 1437c–1(d)(16). Qualified PHAs under section 2702 are those that administer 550 or fewer units—considered as the sum of all the public housing units and vouchers under section 8(o) of the 1937 Act (42 U.S.C. 1437f(o)) (section 8) administered by a PHA—and which are not designated as a troubled PHA under section 6(j)(2), and which do not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months. Please see the preamble to the proposed rule of February 7, 2011 (76 FR 6654–6682), for further discussion of the statutory background.

III. The Proposed Rule

Significant changes to the CFP regulations that were proposed by the February 7, 2011, rule included the following:

- Establishment of a new definition section and proposing several new definitions to be included in this section.
- Clarification of Capital Fund eligible and ineligible activities and incorporating energy efficiency standards.
- Incorporation into part 905 of public housing modernization the regulations at 24 CFR part 968, which part is removed by this final rule.
- Establishment of annual plan submission requirements for nonqualified PHAs as defined in section 2702 of HERA and Capital Fund submission requirements for qualified and nonqualified PHAs.
- Expansion of the requirement for a PNA to include small, as well as large, PHAs. The requirements pertaining to PNA may be addressed in a separate rulemaking.[1]
- Clarification that Energy Star appliances and systems, and cost-effective energy measures, are eligible costs.
- Incorporation of the IECC and American Society of Heating, Refrigerating, and ASHRAE standard 90.1–2010, ''Energy Standard for Buildings Except Low-Rise Residential Buildings.'' The ASHRAE standard can be found at *http://www.ashrae.org/standards-research-technology/standards—guidelines*. The 2009 IECC can be purchased at *http://shop.iccsafe.org/*
- Clarification of the calculation of TDC limits and establishment of the ability for PHAs to request a TDC exception for integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency.
- Limitations on the number of years that PHAs will receive RHF grants.
- Provision for RHF transition funding for PHAs that have already begun receiving RHF funding grants at the time the new 5-year program comes

[1] Part 968 promulgated December 21, 1989, instituted a requirement for large (Comprehensive Grant) PHAs to complete a PNA as a part of the Comprehensive Plan (see 968.315(e)(2). This rule does not add new PNA requirements for large PHAs but rather continues the current requirements with the only change being that small PHAs will also have to comply with those requirements. The current PNA requirements include completion of a brief summary of the physical improvements needed to bring each development to HUD standards for modernization, energy conservation life-cycle cost effective performance standards, and lead-based paint testing and abatement standards; the replacement needs of equipment and structural elements during the period covered; a preliminary estimate of cost; any physical disparities between buildings occupied predominantly by one racial or ethnic group and the physical improvements required to correct the disparity; and the number of units the PHA is proposing for substantial rehabilitation and subsequent sale, if any.

into effect. Those PHAs would receive 10 full years of replacement funding.

• Setting of costs limits for the CFP fee at 10 percent of the annual Capital Fund grant.

• Reduction of the amount of the grant that may be spent on management improvements from 20 percent to 10 percent over a 3-year period.

• Revisions to the requirements for timely obligation and expenditure of Capital Funds currently found at 24 CFR 905.120.

• Incorporation of the design and construction requirements currently found in 24 CFR 941.203 into part 905.

• Establishment of requirements for funding Resident Management Corporation (RMC) activities.

• Establishment of rules on contracting requirements and the use of force account labor.

• Incorporation of development requirements, including those pertaining to mixed-finance projects.

• Implementation of section 35(h) of the 1937 Act, 42 U.S.C. 1437z–7(h), allowing for deviations from Public Housing Requirements, under specified conditions, to ensure the long-term feasibility of mixed-finance projects, while still ensuring certain tenant protections.

• Prohibition on a PHA pledging its assets without written HUD approval.

• Establishment of sanctions for noncompliance with HUD contracts and regulations.

IV. Summary of Significant Changes in This Final Rule

The following changes were made to the proposed rule at this final rule stage:

• Revises the definitions of Capital Fund Annual Contributions Contract (CF ACC); Public Housing Requirements; Qualified PHA; and public housing funds. This final rule adds a definition of Declaration of Trust (DOT) and of Declaration of Restrictive Covenant.

• Clarifies that the provisions of direct social services and the costs for security guards or ongoing security services are not eligible management improvements.

• Provides, as one option to the guaranty of irrevocability of funding, that the required letter of credit is to be valued at 10 percent of the contract price (the proposed rule would have required a letter of credit to be valued at 25 percent of the contract price).

• Clarifies at § 905.202(b) that because of their emergent nature, emergencies that are not identified in the 5-year action plan (statutorily required by section 5A of the 1937 Act) are eligible costs.

• Revises the description of eligible amenities at § 905.202(c).

• Implements, over a 5-year time period, a 10 percent cap on the amount of Capital Funds that a PHA may spend on management improvements. (In contrast, the proposed rule would have implemented this cap over 3 years.)

• Establishes 5 years of a DDTF grant that will be included in the regular Capital Fund formula grant. Since DDTF will be included in the formula grant, the DDTF grant will not be subject to the same requirements as the RHF grants and will be usable for modernization as well as development. PHAs will be able to use the DDTF for any eligible activity under the CFP and this funding will not be subject to accumulation, although the DDTF grant will be subject to the same statutory requirements as any Capital Fund grant and the terms of the appropriation of Capital Funds from Congress.

In addition to the above listed changes, the following changes are also made via the final rule.

The final rule delays the applicability of § 905.300(a) for small PHAs. HUD is taking this action to provide small PHAs additional time to prepare for the implementation of the requirement to submit a PNA. Specifically, small PHAs will be subject to this provision 30 days following the end of a federal fiscal year quarter following HUD's publication of a notice in the **Federal Register** announcing application of the provision. Moreover, HUD plans to delineate a time frame for submission of a PNA such that the first submission by a small PHA would not be sooner than 6 months after the end of the federal fiscal quarter.

The final rule gives PHAs more time to prepare for the change to DDTF. Starting in Fiscal Year (FY) 2014, PHAs that would be newly eligible for RHF funding will receive instead 5 years of DDTF. In FY 2014, if a PHA has one or more years of first-increment RHF funding, the PHA will receive the remaining years of first-increment RHF and an additional 5 years of DDTF. If, in FY 2014, a PHA has already started receiving second increment RHF funding, the PHA will receive the remaining years of second increment RHF funding. An Excel spreadsheet that describes the impact of HUD's changes to DDTF is available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/capfund*.

The final rule provides that PHAs that remove units because of homeownership are not eligible for replacement funding under an RHF.

This final rule corrects an error in proposed § 905.602(b), that addressed limitations on new construction. In the proposed rule, acquisition was improperly excluded from the limitations. HUD's interpretation of construction in this context, as including acquisition, was properly reflected in the regulatory preamble of the February 7, 2011, proposed rule at 76 FR 6654, third column, which stated as follows:

> Section 9(g)(3) of the 1937 Act (42 U.S.C. 1437g(g)(3)) imposes limitations on the use of the Capital Fund or Operating Fund for new construction. Generally, the CF formula shall not provide PHAs funding for the purpose of constructing public housing units (which includes acquisition), if the construction would result in a net increase from the number of housing units owned, operated, or assisted by the PHA on October 1, 1999. . . .''

However, the rule text at proposed § 905.602 did not correctly reflect this interpretation. This error is corrected in final rule § 905.602(b).

The final rule makes changes to proposed § 905.604(n), which addressed deviations from HUD requirements under 35(h) of the 1937 Act (see 42 U.S.C. 1437z–7(h)). The proposed rule would have required that to allow for deviations in a mixed-finance project because of a change in appropriations or other change in law preventing a PHA from providing Operating Funds, at least 20 percent of the units must be nonpublic housing rental units. In addition, the proposed rule would have predetermined specific allowable deviations. Some commenters objected to the 20 percent threshold and the limited allowable deviations. This final rule allows for more flexibility. As the statute provides, there must be a ''significant number'' of units that are not public housing. Rather than specific allowable deviations, the PHA, on behalf of the mixed-finance owner entity (Owner Entity) would submit an Alternative Management Plan to HUD, which would explain the reasons for the deviation and the proposed changes, among other details (see § 905.604(k) of this final rule).

This final rule revises the identity of interest regulations in accordance with HUD's actual practice. This revision provides PHAs with the flexibility to use an instrumentality as a general contractor in mixed-finance projects, as long as cost requirements are met, without having to request a waiver. The identity of interest general contractor must have submitted the lowest bid in response to a request for bids, or, in the alternative, the PHA must submit a written justification to HUD, including an independent cost estimate, that demonstrates that the identity of interest general contractor's costs are less than or equal to the independent third party cost estimate. Identity of interest contractors will be considered by HUD as part of the development proposal approval. Since 2008, HUD has consistently granted waivers to allow this procedure to be followed; 45 waiver requests have been granted, and no waiver request was denied in that period. Additionally, HUD previously published this provision for comment (see HUD's proposed rule entitled ''Streamlining Public Housing Programs'' (FR–4990–P–01), published on August 8, 2008, at 73 FR 45373 and, generally, received supportive comments. The comments on the 2008 proposed rule can be found at *http://www.regulations.gov.*

V. The Public Comments

The public comment period on the proposed rule closed on April 8, 2011, and 45 public comments were received. Comments were received from a variety of stakeholders, including PHAs, trade associations, housing advocates, and individuals.

Definitions (§ 905.108)

Issue: The proposed definition of ''Capital Fund Annual Contributions Contract (CF ACC)'' appears to conflate the definition of the entire ACC (which is a contract addressing the operation of public housing) with that of a Capital Funds amendment (presumably limited to the special terms applicable to the provision of Capital Funds).

HUD Response: To avoid possible ambiguity, this final rule modifies the proposed definition of CF ACC to more clearly indicate that this is an amendment to the Consolidated Annual Contributions Contract (Consolidated ACC). It should also be noted that the ACC is a grant agreement that addresses not only the operation of public housing but also the development and modernization of public housing.

Issue: The definition of ''development'' in § 905.200(b)(2) appears to be limited to activities to add units to inventory; notwithstanding the reference to nondwelling facilities, it is unclear what else might be covered given the limiting phrase. Also, the definition of ''development'' should include a facility that is being modernized.

HUD Response: The reference to ''development'' in this paragraph is in the context of eligible housing, not a general definition of development, and is part of a larger list of eligible activities. The paragraph states that the eligible activities under the rubric of development include ''construction and acquisition with or without rehabilitation; any and all undertakings necessary for planning, design, financing, land acquisition, demolition, construction, or equipment, including development of public housing units, and buildings, facilities, and/or related appurtenances (i.e., nondwelling facilities/spaces). Development of mixed-finance projects includes the provision of public housing through a regulatory and operating agreement, master contract, individual lease, condominium or cooperative agreement, or equity interest.''

Issue: The definition of ''Community Renewal Costs'' in § 905.108 states that Capital Funds may be used for community renewal costs, but not what those costs are, which makes it difficult to apply the TDC formula at § 905.314(e). The commenter states that this term should be defined.

HUD Response: Community Renewal costs consist of the sum of the following HUD-approved costs related to the development of a public housing project: planning (including proposal preparation), administration, site acquisition, relocation, demolition, and site remediation of environmental hazards associated with public housing units that will be replaced on the project site, interest and carrying charges, off-site facilities, community buildings and nondwelling facilities, contingency allowance, insurance premiums, any initial operating deficit, on-site streets, on-site utilities, and other costs necessary to develop the project that are not covered under the ACC. This final rule adds this information to the definition.

Issue: The definition of ''Public Housing Requirements'' should be revised to specifically reference the Consolidated ACC and all amendments, rather than referring to the CF ACC Amendment without the underlying document. If there is intended to be a split between the CF ACC Amendment and the Mixed-Finance ACC Amendment, references to the CF ACC should be corrected accordingly. The definition should read:

> *Public Housing Requirements.* All requirements applicable to public housing including, but not limited to, the 1937 Act; HUD regulations; the Consolidated Annual Contributions Contract, including amendments; HUD notices; and all applicable federal statutes, executive orders, and regulatory requirements, as these requirements may be amended from time to time.

HUD Response: HUD accepts this recommendation and the change is incorporated into the definition at § 905.108.

Issue: HUD's regulation at § 903.3 does not directly define the term ''qualified'' PHA. The commenter recommends that to make the final rule transparent and conducive to public understanding, it should list the 3 factors necessary for a small PHA to be ''qualified'' in order to avoid having a PHA Annual Plan. The commenter additionally notes that while the proposed rule's summary and overview declare that the proposed PHA Annual Plan change would merely incorporate the definition of ''qualified PHA'' in the PHA Annual Plan regulation at § 903.3, the actual proposed rule text removes the current subsection explaining the purpose of the PHA Annual Plan.

HUD Response: For ease of use and transparency, this final rule incorporates the definition of ''qualified PHA'' that is provided in § 903.3, which, in turn, adopts the statutory definition for this term in section 2702 of HERA (codified at 42 U.S.C. 1437c–1(b)(3)(C)), rather than relying on a cross-reference:

The term ''qualified PHA'' means a public housing agency that meets the following requirements:

(1) The sum of the number of public housing dwelling units administered by the agency, and the number of vouchers under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) administered by the agency, is 550 or fewer; and

(2) The agency is not designated under section 42 U.S.C. 1437d(j)(2) as a troubled public housing agency and does not have a failing score under SEMAP during the prior 12 months.

Issue: The definition of ''Owner Entity'' requires that the rule make clear, either in the definition or elsewhere, that a mixed-finance development can be owned by an Owner Entity, a PHA, or, alternatively, an instrumentality.

HUD Response: HUD has clarified the definition of Owner Entity as it relates to mixed-finance in §§ 905.108 and 905.604(a)(1).

Issue: In proposed § 906.604(b)(4), the definition of ''participating party'' is overbroad.

HUD Response: This term is no longer used this final rule.

Issue: The rule should include a definition of ''partners,'' used in § 905.108; a definition of ''declaration of trust''; a definition of ''modernization''; and a definition of ''mixed-finance modernization.''

HUD Response: ''Partner'' was proposed to be defined in § 905.604(b); however, because the term applies elsewhere, this final rule moves the definition to § 905.108. ''Mixed-finance modernization'' is defined at § 905.108, 905.200 and 905.604. Definitions of ''Declaration of Trust'' and ''modernization'' are added to this final rule at § 905.108.

Issue: The definition of ''public housing'' excludes HOPE VI and other non-Capital Fund assistance that HUD regulates.

HUD Response: To capture the Public Housing Funding that HUD regulates, this final rule defines ''public housing funds'' in a more inclusive manner at § 905.108 to include HOPE VI and other funds appropriated for public housing uses, including development, rehabilitation, and operations.

Total Development Cost (TDC)

Issue: Several commenters expressed support for limiting modernization costs to 90 percent of TDC as well as for the TDC exception in § 905.314(c) for integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency, including green construction and retrofits.

One commenter, however, stated that there is a lack of clarity in the language of § 905.314(c) because the terminology varies between ''exception'' and ''waiver,'' where a waiver is normally a more formalized process than a simple regulatory exception.

HUD Response: This final rule retains the 90 percent of TDC threshold for modernization. On the issue of exception or waiver, the commenter is correct, ''exception'' is the correct term and is used in § 905.314(c) of this final rule.

Issue: One commenter states that while the rule deals with Capital Funds, it should also include other sources of funding for public housing such as HOPE VI, Choice Neighborhoods, ''Development funds,'' and any other sources that may become available in the future. The commenter states, for example, § 905.314(c), on TDC, currently covers only development with Capital Funds and that this section should be revised to include all public housing funding sources.

HUD Response: HUD agrees that, because of the federal interest in maximizing the use of funds, TDC applies to all public housing funds and revises § 905.314(c)(1) of this final rule accordingly.

Issue: Heating-and-cooling-degree-days should continue to be an essential factor when considering exceptions to TDC. The unique expenses associated with implementing energy-saving and green features that represent high front-end costs, which may or may not be ''cost saving sensitive'' but are highly sensitive to depleting energy sources, should be treated similarly. The commenter states that the rule should directly and specifically address the eligible high front-end expenses when green features emphasize renewable energy sources that far exceed TDC, in exchange for preserving the other energy sources that are depleting.

HUD Response: This final rule provides for a TDC exception for integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency. HUD believes that, rather than trying to address each possible special case in the rule, this exception preserves PHA discretion to address the commenter's concern as well as other similar concerns that may arise in individual cases.

Contracts and Contracting

Issue: This commenter states that the proposed rule should subordinate its terms for a covenant to the terms of the financing deal for development. As for the covenant for modernization, it should subordinate such terms only when Capital Fund financing is involved in the modernization of the property. The commenter states that for all other cases it would appear that the 20-year covenant for modernization could then be a reasonable provision for inclusion in a final rule.

HUD Response: Section 9(d)(3)(B) of the 1937 Act (42 U.S.C. 1437g(d)(3)(B)) requires use restrictions to remain on the property for 20 years from the date that modernization is completed with Capital Funds on any public housing or portion thereof. HUD retaining a priority position as to HUD's financing ensures that the low-income use requirements will continue to be met. HUD has interpreted the 1937 Act to allow appurtenances to be excepted from the definition of public housing (e.g., nondwelling properties such as administrative buildings) which, if included in public housing, would have had to remain under the Declaration of Trust for 20 years from the latest date on which modernization is completed, but may have liens prior to the Declaration of Trust.

Issue: The proposed regulation at § 905.316(a), which provides that PHA procurement must comply with 24 CFR part 85, should be limited to activities funded with Capital Funds.

HUD Response: Section 905.31(a) explicitly refers to public housing capital activities; no further clarification is necessary.

Issue: A commenter stated that § 905.316(d)(2)(iv), which refers to irrevocable letters of credit as an assurance of completion, is insufficient because the specific terms are not stated. The rule should require that, before accepting a letter of credit, the PHA have its counsel review the proposal form and opine that the PHA and HUD are fully protected under its terms. Another commenter stated that the 25 percent requirement is inconsistent with modern private sector practice and imposes extra costs that do not materially increase the PHA's security, and, in the context of mixed finance, is unnecessary because the tax credit investors have a strong monetary interest in completion.

HUD Response: The main condition that HUD is concerned about, as stated in the rule, is irrevocability. The letter of credit is only one option for the assurance, and the PHA may select one of the other options. Therefore, HUD does not believe a change is necessary regarding further specificity of the terms. However, HUD agrees to lower the percentage requirement to reflect modern practice, and this final rule now requires a 10 percent irrevocable letter of credit at § 905.316(d)(iv).

Issue: Proposed § 905.308(b)(4) appears to be an incredible expansion of prevailing wage rate requirements, since it appears to apply to third party contracts and to professionals. The commenter requests clarification as to whether, under this section, architects, engineers and technicians must be paid the prevailing wage rates and questioned how to find those rates.

HUD Response: The commenter is incorrect; HUD is not expanding the Davis-Bacon wage rate requirements in this rule. These are standard Davis-Bacon provisions and are required by statute; specifically, as Davis-Bacon requirements related to HUD-funded projects under the 1937 Act (42 U.S.C. 1437j(a)). Guidance can be found at the Department of Labor's wage rate site, *http://www.wdol.gov/*. HUD also has a Web page with Davis-Bacon information at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_relations.*

Issue: One commenter asked whether § 905.326, which imposes a 5-year time frame for record retention, intends to add an additional 2 years to the record retention required under 24 CFR 85.36(i)(11) and 85.42(b).

HUD Response: Yes, based on the life cycle of Capital Funds, this rule adds 2 years to the 3 years required under 24 CFR part 85, for a total of 5 years.

Issue: As to § 905.318, a commenter states that a title insurance policy is not available before a PHA takes title.

HUD Response: Title insurance is required at the time the property is acquired by the PHA. This final rule makes this clarification.

Forms

Issue: The definition of ''Cooperation Agreement'' references a form prescribed by HUD, form HUD–52481, which is available in HUDClips (*http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/),* but one commenter stated that the form states that it is a drafting guide.

HUD Response: This form has always been a guide because State and local law must be considered as well. Many PHAs have used this form ''as is'' and that is acceptable as long as it conforms to State and local law.

Issue: One commenter stated that there should be an exception for the use of American Institute of Architects forms, such as AIA–B108–2009 under § 905.316(b)(use of HUD-prescribed contract forms).

A commenter stated that one of HUD's proposed changes to part 905 would require that PHAs nationwide use standard mandated contract forms. The commenter states that while PHAs should be required to incorporate certain terms and conditions in their contract, they must also have flexibility to address local legal requirements, which may vary from state to state.

HUD Response: HUD-prescribed contract forms include necessary federal and Public Housing Requirements. HUD intends to limit the use of contract forms to HUD forms, because nonstandard and local forms do not reflect the appropriate federal limitations. Therefore, HUD has not changed the form requirements.

Issue: The rule is inconsistent with respect to references to ACC forms. The rule refers variously to a mixed-finance ACC Amendment (§ 905.604(k)(2)), ACC Amendment (throughout § 905.604(k)), and CF Amendment (§ 905.612(b)) in closely related provisions. The rule seems to suggest that it intends to replace 3 ACC forms currently in use with a single CF ACC amendment, but is inconsistent in this respect.

HUD Response: It is not the intention of this rule to replace the 3 ACC forms with a single ACC Amendment. There is one consolidated ACC, and separate ACC Amendments for different sections of the program. A definition of ACC Amendment has been added to § 905.108. There are separate ACC Amendments for the various areas of the Capital Fund Program (CFP), including but not limited to the CFP annual formula grant, CFP annual RHF grants, the Capital Fund Education and Training Community Facility Program grants that were awarded, and mixed-finance grants.

Replacement Housing Factor (RHF)

Issue: Reduction in RHF grant. PHAs that have a reduction in units due to demolition and disposition have been eligible for an additional grant, the RHF grant. PHAs have been entitled to an initial 5 years of RHF funding and an additional 5 years of RHF funding if certain conditions are met. The rule proposed, for units demolished or disposed of on or after the effective date of this rule, to reduce the RHF to 5 years of funding, in total.

One commenter observed that this change would have a positive impact on the availability of Capital Funds. Several other commenters, however, objected to this change and stated that RHF funding should be standardized to 10 years because RHF funding is the best approach for developing replacement housing, and many PHAs have compelling reasons for demolishing or disposing of public housing property and need this resource, which is one of the few resources remaining to assist with new public housing. There are still thousands of distressed housing units, and until these can be improved, RHF funding should continue at 10 years. PHAs have a capital backlog of an estimated $32 billion and an average of 10,000 units are lost each year. RHF funding adds up to a vital resource over the course of 10 years, especially given the uncertainty of funding from year to year. PHAs cannot count on an award of HOPE VI or Choice Neighborhood grants, because they are scarce and directed to certain types of projects. The RHF constitutes the only resource available that is dedicated to replacement public housing, and is an important resource for PHAs that do not have HOPE VI funds.

One commenter stated that because the funding is only paid to PHAs that have removed units, without HUD development funds it can take years to develop a viable, fundable plan to for replacement housing. One commenter stated that a PHA cannot count on other resources, and that RHF ''constitutes the only resource available that is dedicated to replacement public housing. HUD has not done a study of RHF, including its leveraging effectiveness, and has not established a sound basis for dramatically cutting this much-needed resource.'' Even with 10 years' worth of funding, agencies must look for other resources, and thus it is not sensible to reduce the amount provided by the RHF even more.

HUD Response: While the RHF is an important tool for development of replacement housing, in the current limited funding environment, the need for replacement housing for a few PHAs has to be balanced with the needs of the majority of PHAs whose Capital Funds modernize existing public housing. These needs are quantified in a study released in June 2011 on modernization needs, ''Capital Needs in the Public Housing Program,'' prepared by Abt Associates, available at *http://portal.hud.gov/hudportal/documents/huddoc?id=PH_Capital_Needs.pdf.* The study found that the Nation's 1.2 million public housing units have an estimated total of $25.6 billion in existing capital needs. Regarding demolition and disposition needs, the Capital Fund and other sources of funding, such as section 8 funding for replacement housing, can be used to meet these needs. The change in the RHF will result in an increase in Capital Funds, which is a more flexible resource.

However, given the significance of the change, this final rule allows for a longer transition period than proposed. PHAs that would be newly eligible for RHF funding in Federal Fiscal Year (FFY) 2014 will instead receive 5 years of DDTF from the Capital Fund. The Federal Fiscal Year is defined in § 905.108 of this rule as the fiscal year that begins each year on October 1 and ends on September 30 of the following year (PHA fiscal years can have different beginning and ending dates). PHAs that have already begun receiving first-increment RHF funding by FFY 2014 will receive the remainder of their first increment and 5 years of DDTF. If a PHA is already receiving second-increment RHF funding by FFY 2014, it will receive the remainder of its second-increment RHF funding. DDTF funding would have fewer limitations than RHF funding, in that it could be used for modernization needs (of which there is a substantial backlog) as well as development; at the same time, statutory requirements applicable to the Capital Fund, such as the requirements for expenditure and obligation in section 9(j) of the 1937 Act (42 U.S.C. 1437g(j)), will apply. This is a generous transition and should ameliorate the issues discussed by the commenters.

Issue: Scattered site replacement housing. One commenter stated that eliminating 5 years of RHF funds would tie the hands of PHAs that replace older public housing units with new scattered-site units. Such units may take years to come online and that the local housing opportunities commission is inclined to pass over units in areas with a high affordable housing concentration in favor of units in wealthier areas. The commenter also stated that reducing the time frame for RHF funding may restrict efforts to develop mixed-finance developments that include some public housing because such deals and regulatory regimes are complex.

HUD Response: Firstly, if the PHA in question has already received at least one year of RHF funding as of the effective date of this final rule, the PHA will be eligible under § 905.400(k) for an additional 5 years of RHF funding. Secondly, the change in RHF grant funding will increase the amount of Capital Funds, which is a more flexible resource that, unlike RHF funds, can be used for any Capital Fund purpose, be it development or modernization. This flexibility is particularly important in the case of smaller PHAs whose RHF funds typically are not enough at any one time to engage in development activities. In many cases, by the time these unused funds are recaptured by HUD, they are lost to their intended use for assisted housing because the life cycle of the funding has expired and the funds must be returned to the Department of the Treasury as general revenues. Under DDTF, PHAs in this situation will be able to use the funds for modernization needs, thus assuring that funds intended for housing needs actually go to that purpose. Also, because these funds are, in fact, Capital Funds and not part of a separate appropriation, the phased-in decrease to 5 years means that there will be more Capital Funds available to all PHAs receiving Capital Fund grants.

Issue: Grandfathering. Commenters stated that PHAs currently receiving RHF grants should retain their full 10 years of eligibility.

HUD Response: Under this final rule, PHAs that have received at least one year of RHF funding as of the effective date of this rule will be eligible for 10 years of RHF grants if they meet the regulatory requirements of this rule, including leveraging (see § 905.400(i)).

Issue: Accumulation of RHF funds. Commenters stated that 10 years of RHF grants should be ''banked'' or accumulated on a PHA's behalf, and paid out if the PHA meets obligations to develop one or more HUD-approved mixed-finance projects.

HUD Response: Appropriations statutes, not regulations, control the period of availability of federal funds, including Capital Funds; in the case of FY 2010, FY 2011, and FY 2012 Capital Funds, the funds are available only until September 30, 2013; September 30, 2014; and September 30, 2015, respectively (see, respectively, div. A, tit. II, Pub. L. 111–117 (approved December 16, 2009); div. B, tit. I, section 1103, Public Law 112–10 (approved April 15, 2011); and div. C, tit. II, Public Law 112–55 (approved November 18, 2011). This limitation prevents lengthy multiyear accumulations as suggested. Even were the funds involved to be appropriated as no-year funds, as a general matter, HUD finds that it is not appropriate for public funds to remain unobligated and unexpended for long periods of time, a policy also expressed in section 9(j) of the 1937 Act (42 U.S.C. 1437g(j)), which penalizes PHAs for delayed obligation and expenditure of funds.

Issue: Reduce administrative costs rather than eliminating RHF grants. Commenters stated that while administering the RHF grants can be cumbersome for HUD, the administration of the program should be simplified rather than HUD reducing the amount made available to the program. The commenters suggested that if the number of units receiving RHF grants is relatively stable from year to year, then after an initial cost, 5 years of RHF funding may not reduce the remaining money in the Capital Fund, while alleviating some of HUD's administrative burden.

HUD Response: Administrative costs are not the major contributor to the need to reduce the total number of years of RHF funding. RHF funds and traditional Capital Fund grants are both funded from the same appropriation, which was $2.044 billion in FFY 2011. While RHF is an important tool for development of replacement housing, the need for replacement housing for a few PHAs has to be balanced with the needs of the majority of PHAs whose Capital Funds modernize existing public housing. Reducing RHF grants from 10 years to 5 years will make more funds available for modernization. It is also common for PHAs to accumulate 5 years of funding and then realize there are insufficient funds to develop units and, subsequently, reject the funding, or allow the funding to be recaptured. When this occurs, most of the funding that is returned to HUD must be transferred to the Treasury, and cannot be redistributed because, during the accumulation, the life cycle of the funds from the first and seconds years of second-increment funding will have expired.

Regarding administrative costs, the replacement housing policy that is presented in this final rule has been revised from the policy presented in the proposed rule, based on public comment. The revised policy simplifies the administration of the program for both HUD staff and PHAs. While the revised policy will still only provide 5 years of additional funding for units removed from inventory due to demolition or disposition, the limitations on the current RHF funding will be eliminated, allowing PHAs to use the funding for any eligible costs under the Capital Fund program, including development.

Issue: Plans for future disposition activities rely upon RHF grants to fund the development of new rental and homeownership units. With the elimination of the one-for-one replacement statutory requirement the need for RHF grants has become greater over time because it provides critical financing to demolish outdated properties. Additionally, the proposed change would make it more difficult to maintain significant numbers of highly subsidized units in mixed-finance properties.

HUD Response: Capital Funds and section 8 funds are available for these purposes. Furthermore, this final rule provides for a lengthier transition period and, beginning in FY 2014, DDTF funds that can be used on the same basis as Capital Funds.

Issue: RHF grants should not be available for units lost to homeownership, but only for units lost because of demolition or disposition, and should be limited to highly leveraged replacement rental transactions using only HUD's mixed-finance methodology.

HUD Response: In this final rule, RHF grants eligibility is based on units lost as a result of demolition and disposition, but not homeownership. In addition, there is a leveraging requirement for PHAs that have already received some RHF funding as of the effective date of this rule and wish to receive an additional 5 years. HUD does not agree that RHF grants should be restricted to mixed-finance as that is overly inflexible.

Issue: Second-increment RHF funds continue to be needed to replace housing losses resulting from ongoing, necessary demolition and disposition. PHAs state that they made demolition and disposition plans based on RHF funding being available.

HUD Response: As originally designed, the RHF grants were never intended to fund the cost of replacement of every unit demolished or disposed of from the PHA's inventory. However, in order to ease the transition for PHAs that have already demolished or disposed of units that are relying in part on RHF grants, the proposed RHF regulation has been modified in this final rule at § 905.400(j) and § 905.400(k). PHAs that have received at least one year of first increment RHF funding prior to FFY 2014, the proposed effective date of the DDTF, will be eligible to receive up to 10 years of funding for units removed from inventory as a result of demolition or disposition. The additional 5 years of DDTF funding will not be subject to the same restrictions as RHF grants because it will be included in the Capital Fund grant (although it will be subject to the same legal requirements as any Capital Fund grant, including the obligation and expenditure requirements of section 9(j) of the 1937 Act (42 U.S.C. 1437g(j)), and any time limit placed on the appropriation by the applicable appropriations act). It should be noted that the PHA always has the option to use additional Capital Fund formula grant funds as a resource in a mixed-finance transaction.

Issue: The change to RHF grants will severely impact bond funding, where the 10 years of RHF grants were a major determinant to the amount of bonds issued. The commenter cites an example in which a ''vast majority'' of units slated for demolition were demolished well before FY 2010, but, because a few units were not demolished until 2010, the units remained in the Public Housing Information Center (PIC) database in FFY 2010 and would apparently be subject to the proposed rule limiting RHF grants to a single 5-year increment even though 10 years of RHF grants from the demolition of these units had been pledged to an outstanding bond issue. HUD should use the date of the demolition or disposition application, not the date of removal from the PIC system, to determine the applicability of new RHF grant rules.

HUD Response: Under this final rule, the postponement of the RHF transition to FY 2014, along with the future provision of DDTF funding, should allow for bond funding to continue. As to the issue of using the date of the application to determine the applicability of new RHF grant rules, the mere existence of an application is far too preliminary a step. First of all, a given application may or may not be approved. Secondly, even if approved, there are cases when demolition does not occur for a considerable period of time, even years. Despite the single example cited by the commenter, the approach that will generally help ensure the best use of public housing funds, and which is the most verifiable, is to base the payment of RHF or DDTF funds on removal of the units from the PIC system.

Issue: Due to the federal budget crisis, RHF funding should be eliminated altogether. Since PHAs also receive tenant protection vouchers, the government is ''paying double'' for each unit removed.

HUD Response: Removing RHF funding altogether would have negative consequences for PHAs that have planned demolitions and dispositions based on future availability of RHF grant increments for replacement housing. On the other hand, to the extent possible, in today's funding environment, PHAs must use federal funds to leverage other sources of funding. HUD believes that the RHF transition provisions in this final rule for PHAs already receiving, and relying on, RHF grants offer the best balance between the need to maximize sources of funding and the need to fund adequate replacement housing. PHAs newly coming into the RHF program as of FY 2014 will receive 5 years of more flexible DDTF funds. It should be noted that in order to prevent duplicative funding, RHF and DDTF funding is prohibited for a PHA that will replace units using another source of federal funding (see § 905.400(i)(5)(iii) of this final rule).

Issue: HUD has not undertaken a study of the RHF grant program, including its leveraging effectiveness, and has not established a sound basis for dramatically cutting this much-needed resource.

HUD Response: HUD has many years of experience with RHF grants and leveraging, which has shown that without leverage it is quite difficult to achieve unit replacement. HUD is not dramatically cutting a much needed resource. Not only will all activities that are currently eligible under the RHF grant program still be eligible under DDTF, but the DDTF will also allow PHAs to use this funding on any eligible activity under the Capital Fund Program. Further, HUD is providing a lengthier transition to DDTF to accommodate PHAs' concerns. It should be noted that the funding for the RHF and DDTF grants is taken out of the general Capital Fund Appropriation. In limiting the DDTF funding to 5 years, the funding that would have gone to only specific PHAs receiving 10 years of RHF funding, will now be distributed among all of the PHAs receiving a Capital Fund formula grant.

Issue: Several commenters objected to the apparent retroactive date of the change to RHF.

HUD Response: The changes to the RHF grant program will not be retroactive, but will be implemented starting in FFY 2014, which should ameliorate the impact.

Issue: In order to compensate for RHF grants that will be ''lost'' under this provision, PHAs should have the freedom to select higher-income applicants.

HUD Response: Under this final rule, PHAs that have demolished or disposed of units, and have begun to receive first-increment RHF funding as of FFY 2014, will be eligible for an additional 5 years of DDTF. Other PHAs will have significant advance notice that they will be eligible for only 5 years of DDTF and can do their financial planning accordingly. Finally, there is no direct nexus between funding for replacement housing and admission of higher-income residents.

Issue: The change to RHF funding is contrary to the statutory requirement that the Capital Fund formula be developed by negotiated rulemaking.

HUD Response: The statutory requirement of section 9(f) of the 1937 Act (42 U.S.C. 1437g(f)), is that ''the formulas . . . shall be developed according to procedures for issuance of regulations under the negotiated rulemaking procedure. . . .'' HUD interprets this to mean that the formulas are initially developed by negotiated rulemaking, not that each subsequent revision requires negotiated rulemaking. HUD previously fulfilled this statutory obligation to this regulation (see HUD's final rule published on September 14, 1999 at 64 FR 49924).

Issue: Funding for small numbers of units. Some PHAs disposed of or demolished small numbers of units at various times, which resulted in RHF allocations too small to acquire or develop any replacement units. PHAs should be allowed to use funds that fall below certain thresholds for other public housing uses, such as modernization. One commenter stated that HUD should consider setting a minimum threshold for RHF funding, below which a PHA may elect to use it for general Capital Fund purposes and not replacement housing.

HUD Response: The final rule addresses these issues by providing that the 5-year DDTF be given to PHAs in their Capital Fund formula grant. The formula grant, along with the increment that has been added, can be used for any Capital Fund eligible purpose, including development of replacement housing or modernization.

Issue: The rule should include an exception where PHAs that demonstrate hardship will be eligible for a second increment of RHF funding. Hardship could include, but not be limited to, in-process development projects that anticipated second-increment RHF funding and localities with critical shortages of affordable housing.

HUD Response: The final rule addresses the issue of in-process development by extending the transition and providing for DDTF. As for other forms of ''hardship,'' such as shortages of affordable housing, HUD already provides funds for housing development and for vouchers, among other forms of funding.

Eligible Activities and Costs

Issue: Is the phrase ''public housing capital assistance'' in § 905.314(b) intended to be broader than ''Capital Funds?'' If so, other included funding sources should be specified.

HUD Response: HUD has added a definition of ''public housing funds'' in § 905.108 that encompasses a broader source of funds.

Issue: A commenter stated that the language in proposed § 905.202 designating those items that are ''not modest in design and cost,'' or not ''customary for the locality'' as ineligible is overly broad and could disqualify many green and energy conservation measures and complicate the use of Capital Funds for all but the simplest of projects.

HUD Response: Green and energy conservation measures that do not otherwise qualify as eligible activities will be covered by the TDC exception found in § 905.314(c) of this final rule. Further, it has been long-standing regulatory description and PHA practice to design, construct, and equip public housing units to improve substandard conditions and to harmonize with the neighborhoods they occupy, meet building standards, and achieve modest levels of comfort and liveability for the low-income public housing residents to be served, and all at a reasonable costs as defined under TDC. See e.g., former 24 CFR 941.203 and 968.112(b) and (o).

Issue: Add ''except for emergencies'' to proposed § 905.202(b), which identifies activities and costs not identified in the 5-year action plan as ineligible costs.

HUD Response: This final rule clarifies that emergencies that are not identified in the 5-year action plan are eligible costs.

Issue: The proposed regulation at § 905.202(g) uses a test for ineligible costs (''in excess of the amount directly attributable to the public housing units'') that may be read more literally than is appropriate. In a mixed-finance project, for instance, are the common areas ''directly attributable'' to the public housing units? Costs should be deemed ineligible when they are disproportionate to the benefit received by the public housing program in relation to other programs, or similar standard. The commenter also states that in § 905.314(a), the concept of ''costs directly attributable to the public housing program'' should be replaced with a reasonability or proportionality concept. The commenter also states that it is inappropriate for HUD to reserve the right in § 905.202(i) to retroactively find costs ineligible, when such costs otherwise came within the definition of eligibility and did not violate some standard set forth in the rulemaking provisions of the Administrative Procedure Act (APA) (5 U.S.C. 501 *et seq.*).

Another commenter stated that the ''directly attributable'' standard does not provide a standard by which a PHA can justify a cost's eligibility. This commenter states that the principles for cost allocation in OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments) should be the basis for the eligibility determination.

HUD Response: HUD disagrees. While concepts such as proportionality and reasonability are subjective, direct attribution to the intended purpose of the funds is objective. In general practice, the objective measures would not exclude eligible costs along the lines of what the commenter claimed. By requiring direct attribution to public housing, HUD is ensuring responsible use of government funds, and acting in accordance with 2 CFR Part 225. As to the APA issue, the APA requires public notice and an opportunity to comment on the rule itself, which the public has received regarding this rule. Each individual decision that may be made under this rule is not subject to additional notice and comment. On the contrary, it is entirely lawful for federal agencies to reserve discretion over managing their own programs.

As to OMB Circular A–87, Cost Principles for State, Local, Indian, and Tribal Governments, now codified at 2 CFR part 225 (part 225), the final rule cites part 225 in relation to reasonable costs, and as one test for ineligible costs under § 905.202(d). However, by suggesting that 2 CFR part 225 be the sole test for the connection between the costs and the public housing program, the comment misunderstands the nature of the circular. Part 225 is designed to identify basic principles, not to take the place of specific program regulations. Part 225 states, inter alia, ''The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project.'' (See 2 CFR part 225, Appendix A, General Principles for Determining Allowable Costs, at § A.1). Also, part 225 states that allowable costs must conform to ''governing regulations as to the types or amounts of cost items.'' (See *Id.* at § C.1.d). By requiring direct attribution to public housing, HUD is acting well within the scope of 2 CFR part 225, its statutory authority, and APA principles.

Issue: While § 905.200(b)(12) makes approved homeownership activities eligible, some activities—such as relocation assistance, mobility counseling, and homeownership counseling—may appropriately occur prior to the approval of a specific homeownership plan. After the introductory phrase ''activities associated with approved homeownership,'' the rule should add ''provided, however, that activities under sections C and D may occur prior to approval of the homeownership plan.''

HUD Response: Resident relocation and mobility counseling, which includes those items mentioned in the comment, are separately eligible under § 905.200(b)(10) of this final rule. While the physical relocation has to be after the approval of the homeownership plan, the mobility counseling and surveying of the tenants can be done at any time. However, as the section in question does not specify the need for a homeownership plan or timing in relation to it, no rule revision is required.

Issue: Under § 905.312(a), are amenities such as air conditioners, dishwashers, washing machines and dryers eligible costs, or prohibited luxuries?

HUD Response: HUD agrees that some further clarification may be helpful with respect to amenities. This final rule clarifies that air conditioning is an eligible modest amenity. Further clarification on luxury items and modest amenities will be provided in future guidance.

Issue: Are Capital Funds eligible to be used to construct office, resident service, or maintenance facilities?

HUD Response: Yes.

Issue: How does § 905.202(f), on direct provision of social services, relate to management improvements, and could HUD provide some examples?

HUD Response: Section 905.202(f) provides that direct provision of social services is not an eligible Capital Fund expense. Examples of such ineligible expenses, provided in the rule, are salaries for social workers or General

Educational Developmental (GED) teachers, and this prohibition would apply to other benefits for such workers as well. Statutorily, under 42 U.S.C. 1437g(d), services simply are not Capital Fund eligible costs; rather, the costs of the provision of services may be an operating cost under the Operating Fund as provided in 42 U.S.C. 1437g(e)(1)(D). While it is not entirely clear what the commenter means by ''relate to management improvements,'' the commenter appears to be asking whether these types of costs may nonetheless be permitted under the Capital Fund as management improvements. Eligible management improvements under § 905.200(b)(7) of this rule include activities that have a linkage between the management improvement and the correction of an identified management deficiency. Generally, the ineligible social services expenses about which the commenter asks would not be tied to management in such a way as to make them eligible as management improvements. HUD may issue further guidance on this subject in the future.

Issue: One commenter states that, in § 905.200(b)(8), the discussion of eligible resident self-sufficiency activities refers to funding from the Operating Fund for $25 per-unit, per-month, for resident participation. The commenter states that Operating Fund rule at 24 CFR 990.190(e) references only $25 per annum.

HUD Response: This statement is corrected in this final rule.

Issue: The examples of Capital Fund-related legal costs at § 905.200(b)(13) are too limited and should be expanded. Costs that specifically should be mentioned include: negotiating and drafting mixed-finance arrangements; negotiating and reviewing property descriptions; title policies, regulatory interpretation, opinions, drafting, reviewing, and negotiating evidentiary documents for mixed-finance development, the Capital Fund financing program, conventional development, and acquisition transactions.

HUD Response: Unfortunately, existing funding does not allow every potential legal cost that one can envision to be expressly included. All of the legal costs mentioned in the comment would be eligible if they were reasonable in cost and related to the Capital Fund development activities. However, this rule is not intended to be an exclusive list of eligible and Capital Fund-related legal costs.

Issue: Section 905.200(b)(7)(iii) (''Activities that include or foster equal opportunity'') should be revised to include Limited English Proficiency(LEP), Reasonable Accommodation, and Violence against Women Act (VAWA) policies and their implementation as part of equal opportunity requirements.

HUD Response: Housing counseling for residents and prospective residents, as well as the design and construction of accessibility improvements, are eligible under the Capital Fund. (See §§ 905.200(b), 905.200(b)(7)(i) and (iv) and 905.200 (b)(10) of the rule.). Generally, a PHA would use operating subsidy or other noncapital resources for staffing and program materials for LEP or VAWA, rather than management improvements under the Capital Fund.

Issue: Proposed § 905.200(b)(4) states that vacancy reduction may be an eligible activity. It would be helpful for the rule to be more explicit about what is expected, either in the rule itself or in guidance. Also, compliance with accessibility requirements should be explicitly mentioned under proposed § 905.200(b)(6) and should be more specific.

HUD Response: HUD is making no change to the final rule text, but may issue future guidance on this and other issues. As to accessibility specifically, § 905.312 addresses accessibility requirements.

Issue: The rule should allow set-asides of capital replacement reserves for future modernization as an eligible activity. The inclusion of ''modernization'' as an eligible activity in section 9(d)(1)(A) of the 1937 Act (42 U.S.C. 1437g(d)(1)(A))— coupled with the authorization to accumulate funds to undertake modernization, substantial rehabilitation, or new construction of units in section 9(j)(1)(B) of the 1937 Act (42 U.S.C. 1437g(j)(1)(B))— should be sufficient legal basis to allow for such capital replacement reserves.

HUD Response: Replacement reserves as such are not an authorized use of Capital Funds under section 9 of the 1937 Act (42 U.S.C. 1437g). Under section 9(j)(1)(B) of the 1937 Act (42 U.S.C. 1437g(j)(1)(B)), accumulated funds for modernization are required to be expended within 24 months once sufficient funds are accumulated to undertake an activity.

Issue: Subpart B, starting at § 905.200, should have more precise language describing what is covered by the subpart.

HUD Response: HUD agrees and has made the suggested revision at § 905.200(a) of this final rule.

Issue: The term ''significant'' in the phrase ''. . . PHA must have determine that there is no debt service payments, significant Capital Fund needs, or emergency needs that must be met prior to transferring 100 percent of its funds to operating expenses'' in 24 CFR 905.314(1)(2) should be clarified.

HUD Response: HUD is considering issuing guidance to assist HUD field offices and PHAs with what information should be evaluated prior to allowing a small PHA to transfer all of its Capital Funds to Operations.

Federalization and Federalism

Issue: The rule should clarify the meaning of § 905.602(c) of the proposed rule, prohibiting federalization of certain projects. One commenter stated that the rule should provide that federalization is prohibited except as otherwise approved by HUD. Another commenter stated that there is no authority for prohibiting nonfederal public housing owned by a PHA from being federalized as provided in that section and that such policy is not in the interest of preserving affordable housing. Another commenter noted that the only authority for allowing federalization is found in section 9(n) of the 1937 Act (42 U.S.C. 1437g(n)), and that any such language should be carefully limited to apply only to ''covered locally developed public housing units'' as defined in section 9(n). This commenter stated that there is no other statutory authority to limit a PHA's decision to bring PHA-owned properties into the public housing program, subject to the HUD approvals generally required for public housing development. In some instances, such units may provide the most economical and best opportunities for the production of replacement public housing.

HUD Response: This final rule revises proposed § 905.602(c) titled ''Federalization,'' to make a more general statement that nonpublic housing properties may be used in the development of public housing units provided all requirements of the 1937 Act and the development requirements of this part are met. For historical reference, former section 9(n) of the 1937 Act was never used by HUD to federalize projects. Former section 9(n) was repealed by the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, 117 Stat. 1, approved February 20, 2003; see 117 Stat. 502) with additional directions applicable to ''covered locally developed public housing units'' in the states of New York and Massachusetts. HUD's regulation at § 905.602(c) is neither a development exception nor a new development method relying on any form of prior authority relating to Federalization. Instead, HUD may consider any property presented for development of public housing units under all of the existing requirements of the 1937 Act and 24 CFR part 905.

Issue: HUD's proposed regulation at § 905.602(c) should be revised to provide that a PHA may acquire and modernize a building that it already owns outside the public housing system, if that same modernization would be permitted for new construction under § 905.602(b).

HUD Response: Section 905.602(c), both as proposed and in this final rule, allows this activity to occur.

Issue: This rule triggers Executive Order 13132 on Federalism. This rule opens the public housing market to private partnerships with restrictions on the public on obtaining information and attending meetings, and without the accountability required for use of public funds. The commenter states that planning issues are under the jurisdiction of local municipalities under state requirements.

HUD Response: Executive Order 13132 on Federalism concerns regulations and proposed legislation that have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This regulation does not have these direct effects on states or on the relationship between the Federal Government and the states. This rule, which is authorized by statute, establishes substantive regulations and procedures for the use of federal funds by PHAs, as directed by statute, and does not preempt state law. Therefore, this rule does not trigger the Executive Order.

Conversion of Units

Issue: A commenter states that § 905.10(f)(3) as codified prior to the effective date of this final rule indicates that the total estimated need of the development is unchanged by conversion of units. The commenter states, however, that the preamble to the final rule adopting the existing regulation explains that ''reduction of units is not based only on demolition or disposition.'' If the intention of the new Capital Fund rule is not to change the formula, the language of the current rule regarding conversions should remain. The commenter expressed concern about the impact of this rule, considering the unit conversion it must undertake at one of its developments. HUD's policy, as stated in the proposed rule, would result in a permanent loss that is difficult for a housing agency of a small size to absorb. If a small PHA has an outstanding Capital Fund Financing Program loan, the terms of which require maintaining its public housing stock to generate sufficient Capital Fund grants to sustain three-to-one debt service coverage, HUD's proposed rule also may mean that it cannot undertake the necessary reconfiguration without partial prepayment of the loan.

The commenter further states that HUD's funding policy should encourage rather than discourage PHA action to convert efficiencies to one-bedroom units. Because PHAs have the same square footage to manage and renovate, it would be reasonable for the Capital Fund to build in the proper incentive by not taking away funds when conversions occur.

HUD Response: The Capital Fund formula is based on a complex calculation with a variety of characteristics including, but not limited to, the number of units in the development, the average number of bedrooms, and the location and age of the development. Based on the way the formula is calculated, if one PHA has a larger formula share it reduces the formula share for other PHAs. It was never the intent of the Capital Fund formula to result in HUD continuing to pay the modernization needs or the administrative costs of units that no longer exist at one housing authority while making other housing authorities with modernization needs pay for them, which would be the result if the Capital Fund were used to pay for units lost to conversion. The incentive for reconfiguration or conversion for the PHA is to better serve the needs of the low-income families in the community. Furthermore, funding for reconfiguration or preparing units for conversion, and any necessary relocation, are eligible Capital Fund expenses.

Issue: A commenter states that while the new rule specifically states that reconfiguration of units will alter Capital Fund formula funding allocations, this policy was not articulated in the Capital Fund rule prior to the proposed rule and may have unintended consequences, such as a decrease of subsidy to the agency.

A commenter states that § 905.400(f)(3) differs from the current regulation, which is that conversion of public housing units does not change the Capital Fund formula shares. This proposed policy will discourage, for example, combining of unmarketable efficiency units into one-bedroom units.

HUD Response: HUD is aware that some PHAs have been confused about the intent of the proposed provision, § 905.400(f)(3), as well as the current provision, 24 CFR 905.10. The purpose of this provision is to clarify HUD's policy as it has consistently been implemented.

Issue: How does the limit on new units found at § 905.602(b)(1) apply to merged units? May a PHA replace merged units, and will the new units be eligible for Capital Fund and operating subsidy?

HUD Response: This limit based on the number of units in management as of October 1, 1999, would remain the same. Thus, for example, if a PHA had a unit count of 100 as of 1999 and in FY 2005 the PHA decided to merge 6 efficiency units into 3 one-bedroom units, the PHA's unit count would be reduced to 97, and the PHA would be allowed to build 3 additional units.

Separating CFP Informational Requirements From PHA Annual Plan Requirements

Issue: Small PHAs should not have the same reporting requirements as large authorities and should operate as stated in HERA. Removing some reporting requirements from the annual plan and making their submission separate would result in small housing authorities being obligated to submit forms from which they are currently exempt. Even with the passage of HERA, small housing authorities continue to suffer from an excessive regulatory structure. HUD should not reestablish a regulatory burden that has been lifted by HERA. HUD should find a less burdensome method of receiving any necessary information, such as through an annual audit.

HUD Response: These commenters appear to be referring to qualified PHAs, a category established under HERA as ''a public housing agency meeting the following requirements: (1) the sum of public housing dwelling units administered by the public housing agency and the number of vouchers under section 8(o) of the 1937 Act is 550 or fewer, and (2) the public housing agency is not designated as a troubled PHA under section 6(j)(2) and does not have a failing score under SEMAP during the prior 12 months.'' While qualified PHAs are exempt from submitting a PHA Annual Plan, they are not exempt from the requirement to hold an annual public hearing or to submit a 5-Year Plan. Further, HUD has authority under section 9 of the 1937 Act (42 U.S.C. 1437g) to obtain information needed to calculate the Capital Fund formula and monitor the implementation of the CFP.

Issue: Large PHAs (over 550 units) that are required to submit both a PHA

Annual Plan and a Capital Fund program submission should be able to submit those documents at the same time as permitted under current rules. A key goal of the PHA planning process under section 5A of the 1937 Act (42 U.S.C. 1437c-1) is to unify and consolidate PHA planning and reporting requirements from the various programs that PHAs administer in order to create efficiencies for PHAs and HUD, and also to provide residents and the community with an opportunity to review the PHA's plans holistically. The changes included in this proposed rule may have the impact of requiring a second public process, reducing efficiency, and creating confusion in the community about the opportunities for input. If a PHA submits their annual plan, and then subsequently submits a Capital Fund budget that alters the annual plan, the PHA will be required to hold a second public hearing process, unnecessarily burdening PHAs.

A commenter states that a separate public process from developing the agency plan should not be required. Combining these processes has worked well. The commenter also stated that it is difficult to get resident participation and that all parts of a PHA are tied together and should be discussed in total, rather than the context of individual meetings. The commenter concluded that combining this public consultation has worked well for over 10 years. Decoupling the capital planning from the overall agency planning will make it more difficult to see the big picture of the PHA, require more administrative time and expense for the PHA with separate resident advisory board actions, and make it more challenging for the PHA Board to pass an agency budget that contains both operating and capital expenditures. Furthermore, it may not be feasible to schedule a resident meeting and a Board of Directors meeting in time to comply with HUD deadlines for submission of the ACC Amendment. This commenter suggests HUD extend the deadlines.

HUD Response: HUD's regulations at § 905.300(b)(3)-(4) are revised in this final rule to clarify that the PHA is to present the Capital Fund submission to the public and its residents and Resident Association Board (RAB) concurrent with the public hearing being held on the PHA Annual Plan. By making these submissions concurrent, the PHA will be able to present an integrated plan for public housing to the community and to the RAB. The PHA must consider the recommendations of the RAB concerning both the PHA Annual Plan (under current 24 CFR part 903) and the Capital Fund submission, and these submissions must be consistent with any applicable Consolidated Plan. This final rule further clarifies that the required forms and information on the Capital Fund submission will be submitted along with the Annual Contributions Contract Amendment submitted to HUD when the annual Capital Fund awards are made.

Issue: How does HUD have the discretion to require separate reporting requirements for the Capital Fund activities, considering that certain items, such as capital improvements and asset management, are required to be in the PHA Plan?

HUD Response: The PHA Annual Plan requirements are satisfied with general information, as opposed to the more specific information required for Capital Fund formula purposes. They are not the same requirements.

Issue: The language regarding budget submission requires clarification. According to a commenter, the proposed rule states that: ''The PHA's budget must be approved by the PHA's Board of Commissioners, but does not require HUD approval (see § 905.300(b)(1)).'' If that in fact is the case, why require the budget to be submitted to HUD when the CFP ACC is submitted to HUD? The proposed rule should state that the budget must be approved and therefore gets submitted to HUD for review and approval, or that the PHA's budget must be approved by the PHA's Board of Commissioners, and does not need to be submitted to HUD for its review and approval. One commenter states that PHA Board approval only should be required.

HUD Response: This final rule revises § 905.300(b)(1)(iv) to state that the PHA's 5-Year Action Plan and budget must have been approved by the PHA's Board of Commissioners before it is submitted to HUD for review and approval. Under the current process for Qualified PHAs HUD reviews the PHA's budget for eligible activities and compliance with cost limits and other requirements. The HUD review is tantamount to HUD approval. Therefore, the language has been changed to signify that HUD approval is required.

Issue: HUD should provide additional funding to defray the cost of the PNA inspection. Another commenter questioned whether PNA inspections would be conducted by PHA staff or outside firms, thus resulting in additional costs. Another commenter stated that the rule should provide more details about the PNA. Another commenter stated that the PNA should be a flexible planning tool and not impose requirements.

HUD Response: The PNA is currently addressed in a separate rulemaking (see HUD's proposed rule published on July 20, 2011, at 76 FR 43219), which provides details on the PNA. Unfortunately, due to constraints on funding, HUD cannot provide extra funds for this purpose.[2]

Issue: A commenter stated that in § 905.300(b)(3) the reference relating to the PHA Annual Plan is confusing as the CFP is being decoupled from the PHA Annual Plan process. The commenter questioned whether HUD is requiring a separate consultation via the processing of the PHA Annual Plan or it can be a stand-alone process. Another commenter states that decoupling CFP requirements from the PHA annual plan is ''essential to guaranteeing resident input''; however, it may also be beneficial to maintain explicit requirements for resident meetings and input.

HUD Response: In this final rule, most cross references in § 905.300(b) to 24 CFR part 903 are removed and § 905.300 is expanded to include sections on resident and RAB participation, public hearings, definition of significant amendment, criteria for plan revision, and procedures for HUD review and approval. These changes should ensure that the decoupling is complete.

Development, Redevelopment, and Modernization

Issue: Since this regulation replaces part 941 in full, whenever the rule regulates the development process, it should refer not only to Capital Funds, but also HOPE VI, Choice Neighborhoods, development funds, and other sources appropriated by Congress for the development of public housing.

HUD Response: This final rule includes a definition of ''public housing funds'' at § 905.108 to provide this broader definition.

Issue: Proposed § 905.314(g) provides that the modernization cost limit is 90 percent of TDC. One commenter suggests that the rule allow determination for redevelopment to be made when modernization costs reach a lower threshold such as 70 or 80 percent. In such cases, when the community believes such modernization expenditures would not be prudent use of federal financial assistance, such a community or PHA should be able to decide instead to demolish and develop new affordable housing.

HUD Response: Demolition of public housing is governed by section 18 of the

[2] Please see footnote #1 for more information.

1937 Act (42 U.S.C. 1437p) and is beyond the scope of this rulemaking.

Issue: The reference to Capital Fund financing in proposed § 905.600(c) is unclear.

HUD Response: Proposed § 905.600(c) on Capital Fund financing is revised in this final rule. HUD's final rule on Capital Fund financing (see final rule published on October 21, 2010, at 75 FR 65208) is incorporated in subpart E of this final rule.

Issue: Proposed § 905.600(d) suggests that a PHA or a PHA's partner would solicit construction bids after approval of a development proposal. At least in the mixed-finance environment, a final development proposal cannot be submitted without a firm construction price.

HUD Response: In this final rule, HUD's regulation at § 905.600(c) on the development process is revised. HUD does not dictate when a PHA or a PHA's partner solicits construction bids. However, the PHA must submit, as part of its Development Proposal (§ 905.606), an independent construction cost estimate or actual executed construction contract that supports the permanent and construction budgets for the project.

Issue: Proposed § 905.600(e)(7) should refer to ''proceeds'' of an Operating Fund Financing Program (OFFP).

HUD Response: This final rule makes this revision at § 905.600(d)(8).

Issue: Proposed § 905.202(h) is overbroad and could be read to prohibit temporary or bridge funding.

HUD Response: This section, at § 905.202(i) of this final rule, refers to costs that are actually funded by a duplicate source and temporary or bridge financing does not result in duplicate funding.

Issue: Section 9(l) of the 1937 Act (42 U.S.C. 1437g(l)) allows for capital- and operating-fund-only transactions, and permits HUD to reduce the period during which the property must be operated according to Public Housing Requirements. However, the proposed rule does not reflect this flexibility. Also, following the statute, the rule should allow PHAs to make section 8 assistance available in cases where there is operating assistance but not Capital Fund assistance.

HUD Response: Generally, the reference in § 905.304(a)(3) to ''such shorter period as permitted by HUD by an exception'' implements the flexibility under 42 U.S.C. 1437g(l).

In the case of mixed-finance specifically, § 905.604(j)(3)(ii) states that the term of the ACC Amendment will be determined based on the assistance provided under § 905.304, ''unless reduced by the Secretary.'' Also, if the PHA is no longer able to provide operating subsidy, final rule § 905.604(j)(3)(iii) permits early termination of the DOT or Declaration of Restrictive Covenants and provides public housing residents with a relocation option, which may be a unit in another project or a Housing Choice Voucher.

Issue: A commenter stated that the proposed regulation at § 905.312(c)(1) should not refer to outdated Handbook 7485.2 REV.

HUD Response: This handbook is not referenced in the rule.

Mixed Finance

Issue: All provisions of this rule should be premised on the belief that the interests of all participants are advanced if the regulations permit a predictable and efficient restructuring such that a project can be operated on a stable basis with whatever level of federal subsidy is reliably available.

HUD Response: Along with statutory compliance, this rule also provides for sufficient flexibility to meet project goals.

Issue: The rule should provide more extensive standards. The articulated standards in the proposed rule bridge the gap about halfway—they include some substantive standards, yet do not include some of the fundamental ''rules'' that have developed over the years regarding, for example, funding and replenishing of reserves and required segregation of public housing funds (both direct subsidy and tenant rents) from attachment in the case of foreclosure or loan acceleration.

HUD Response: The types of issues to which the commenter refers are matters of policy and procedure that are best stated in guidance, such as PIH Notices and policy statements.

Issue: HUD's regulation at § 905.600(d) should be revised to take into account that, in mixed-finance, the construction contract is virtually always signed before proposal approval. Accordingly, the second sentence of § 905.600(d)(3) should be revised to remove the phrase, ''After HUD approval of the development proposal. . . .''

HUD Response: This final rule adopts, at § 905.600(c)(3), this revision to accord with general industry practice.

Issue: Commenters questioned language suggesting why the mixed-finance category includes projects funded entirely with Capital Funds.

HUD Response: If there is an Owner Entity other than the PHA, the project is considered mixed-finance even if 100 percent of the funding is public housing Capital Funding. However, if the PHA holds a 100 percent interest in the project, it is not a mixed-finance project.

Issue: The rule is overbroad in requiring the formation of an ''Owner Entity'' in situations where nonpublic housing sources are being utilized, but no third-party participation in the ownership is required. There are instances, where state or local resources may be used, where the rule would seem to require another entity, but the transaction should not require the PHA to go to the expense of establishing and maintaining a separate Owner Entity.

HUD Response: This final rule revises § 905.604 to clarify this role of the Owner Entity. The partnership arrangement to which the commenter refers applies in mixed-finance situations; where the PHA owns 100 percent of the units, mixed-finance development would not apply.

Issue: Proposed § 905.604(a) should be revised to reflect that in some cases, such as meeting Davis-Bacon requirements, only the mixed-finance owner can comply; the PHA can require compliance, but cannot directly comply itself.

HUD Response: HUD agrees, and this final rule incorporates the suggested change at § 905.600(a).

Issue: HUD's regulation at § 905.604(h), ''Irrevocability of financial commitment,'' should allow alternatives to the opinion of counsel. The opinion of counsel will not always be feasible to obtain.

HUD Response: The opinion of counsel as to irrevocability is an option, not a requirement. Please note that this final rule places this material at §§ 905.606(a)(6)(iii)(A) through (D).

Issue: HUD's regulation at § 905.604(h)(1) states that, to ensure the irrevocability of funds, that the PHA or the Owner Entity be ''ready willing, and able'' to attain milestones. Also, the conditions in the legal documents must be ''commercially reasonable.'' These terms are vague and could lead to a finding of noncompliance if an auditor applies a different definition of commercial reasonableness.

HUD Response: This final rule, in § 905.606(a)(6)(iii)(A), revises this terminology to avoid ambiguity. The contractual conditions must be ''generally consistent with similar affordable housing transactions,'' and the PHA or Owner Entity must know of no ''impediments that would prevent the project from moving forward consistent with'' the project milestones.

Issue: The requirement in proposed § 905.604(h)(3), that counsel has examined the availability of financing, seems to mean that counsel will examine the funding for the funding source, which may be feasible in some cases, such as funds received from a city, but not in the case of bank or Assisted Housing Program (AHP) funds, because those entities will not reveal their funding sources.

HUD Response: This proposed section (now at § 905.606(a)(6)(iii)(D)) is revised in this final rule to clarify that it is the participating parties' financing that is examined.

Issue: In the case of operating-fund-only assistance under proposed § 905.604(k), one commenter stated that the provisions that require use restrictions to continue for a substantial and virtually indefinite period, whether or not there is operating subsidy to support them, are highly problematic for mixed-finance deals. The full flexibility permitted by 42 U.S.C. 1437g(l) should be utilized in order to give lenders and investors assurance that if sufficient subsidy ceases to be available, they will be promptly released from the obligation to house people who require such subsidy. In operating-fund-only projects, in such cases, section 8 assistance should be used to allow residents to remain if they wish.

HUD Response: This final rule implements the ability for HUD to reduce the use restriction period found in 42 U.S.C. 1437g(l) (see § 905.604(j)(2)(ii) and (iii)). If the use restrictions are terminated, the PHA must provide residents with a decent, safe, sanitary, and affordable unit to which they can relocate, which may include a public housing unit in another development or a Housing Choice voucher.

Issue: Proposed § 905.608, which covers the site acquisition proposal, only applies to acquisition with Capital Funds and should include acquisition with all available sources, including HOPE VI and other funds.

HUD Response: This final rule adds a definition of ''public housing funds'' to include not only Capital Funds, but also HOPE VI, Choice Neighborhoods, development funds, or any other funds appropriated by Congress for public housing development.

Issue: There is no justification in § 905.608(f) for stating that, absent HUD approval, the purchase price may not exceed the appraised value, because the federal interest in cost reasonableness is generally accomplished by TDC rules.

HUD Response: TDC is applicable to new development and acquisition of existing housing. The TDC operates as a constraint on excessive payments of public funds in the context of § 905.608 along with HUD's requirement for a PHA to provide an appraisal of the property.

Issue: Proposed § 905.612(b)(2) on mixed-finance drawdown ratios is unclear as to whether the requirement applies only to the final drawdown ratio or to interim ratios as well.

HUD Response: This final rule clarifies this paragraph to refer to the overall drawdown ratio.

Issue: While the rule requires that HUD funds be drawn down in the same ratio as other funding sources, projects are more economically feasible when interest-free HUD funds can be drawn first.

HUD Response: HUD's regulation at § 905.612(b)(2) clarifies that upon completion of the project, the ratio of public housing funds to non-public housing funds for the overall project must remain as reflected in the executed documents. The ratio does not apply to the construction period.

Issue: HUD's proposed regulation at § 905.604(b)(6) should be revised to acknowledge that Public Housing Requirements do not apply to non-mixed-finance development.

HUD Response: This section is clarified in the final rule. Public Housing Requirements apply to public housing-related work or mixed-finance development as meant in this subpart.

Issue: Proposed §§ 905.316, 905.318, and 905.320(b) and (c) appear to apply to both mixed-finance and conventional development, yet this is not clear from their language.

HUD Response: This final rule clarifies these sections.

Issue: HUD's proposed regulation at § 905.604(a) is unclear as to whether it applies only to the PHA, mixed-finance owner, or both.

HUD Response: This final rule revises this section. Final § 905.604(a)(1) explains the possible ownership structures under mixed-finance.

Issue: Rather than stating that mixed-finance contracts should ''specify that they comply'' with listed requirements, mixed-finance contracts should be required simply to contain no provisions inconsistent with the applicable regulations.

HUD Response: An affirmative statement of compliance provides a basis for HUD to take enforcement action if the statement is untrue, which is an assurance that HUD requires when committing public funds.

Issue: The rule should codify the authority to retain the original DOFA that existed prior to a mixed-finance transaction.

HUD Response: The rule codifies the current practice. In § 905.604(a)(4) of this final rule, the Department will retain the date of full availability (DOFA) if a PHA is doing mixed-finance modernization.

Issue: The rule should be more specific as to the minimum information required by a PHA for the release funds for predevelopment assistance under proposed § 905.612(a)(3).

Response: HUD reviews each mixed-finance project separately, as the structure and financing of each project is unique. HUD has issued ''Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development,'' which contains provisions related to predevelopment expenses. Further, HUD has internal mechanisms for evaluating each mixed-finance project and issues that arise within the context of mixed-finance development. These mechanisms are the best way to manage mixed-finance projects, including the use of public housing funds for predevelopment purposes. Therefore, to date, there has been no need to issue generally applicable guidance on the use of public housing funds for predevelopment expenses related to mixed-finance development.

Issue: A commenter asked under what circumstance HUD would approve a PHA to exceed the 5 percent limit for predevelopment costs under § 905.612(a)(2).

HUD Response: As the rule states, this will be determined on a case by case basis. HUD declines to speculate about the circumstances under which this may occur.

Deviations Under Section 35(h) of the 1937 Act, 42 U.S.C. 1437z–7(h)

Issue: A commenter stated that additional flexibility for mixed-finance projects is considered helpful, for instance flexibility with rent and income eligibility requirements for projects with 20 percent or more nonpublic housing units. Another commenter stated that the threshold should be the lesser of 10 percent or 10 units. Another commenter stated that such flexibility should be granted for all public housing stock.

HUD Response: HUD's regulation at § 905.604(k) of this final rule provides flexibility where a PHA has a project in which a ''significant number'' of units are other than public housing units, following the statutory language under section 35(h) of the 1937 Act (42 U.S.C. 1437z–7(h)), which addresses mixed-finance development. The statute allows deviations under the specific statutory conditions stated, which do not apply to all public housing stock.

Issue: The standard for allowing ''restructuring'' is too limiting and ''HUD should expand it to the extent interpretation permits, and should generally recognize the ability of parties to make restructuring decision outside this standard where the standard need not be applied.'' This commenter states that the phrase ''reduction in appropriations'' is meaningless without a recognized starting point, and suggests that the per-unit appropriations in 1998 would be a reasonable starting point for interpretation. In addition, any definition should recognize the likelihood of continuing inflation; a flat appropriation over 10 years would be the equivalent of a 50 percent effective reduction in funding at an inflation rate of 7 percent. This commenter states that HUD may interpret ''reduction in appropriations'' to be a reduction in the present value of the per-unit appropriation available. This commenter also states that HUD should recognize that many Regulatory and Operating (R&O) Agreements, for good reason, limit the operating-subsidy pass-through obligation of the PHA with reference to what the PHA is receiving from HUD. For instance, an R&O Agreement might provide for the PHA to pass through 90 percent of what it actually receives for that project. In literal terms, such a PHA is never prevented by a funding reduction from meeting its obligations, because its obligations automatically decrease, yet clearly a project receiving 50 percent of its intended subsidy would be in deep trouble and require deviation under section 35(h) of the 1937 Act. The commenter states that skilled drafters could provide alternate 35(h) triggers, such as a PHA failure to provide alternate non-operating subsidy funding in specified circumstances. This commenter states that ''HUD needs to take care that it does not carelessly eliminate these triggers.'' This commenter states that the rule eliminates these triggers by replacing the statutory phrase ''from meeting its contractual obligations'' with ''from providing Operating Funds as provided in its contractual agreement.''

HUD Response: This final rule implements the statutory authority correctly, and the statute is unambiguous in referring to ''a reduction in appropriations under section 1437g,'' meaning an actual reduction in appropriations from Congress, not a change as a by-product of inflation. HUD recognizes that projects are structured differently. For this reason, this final rule removes the proposed section on ''Allowable Deviations.'' HUD encourages PHAs to draft R&O agreements that clearly address the issue of reduction in appropriation and clearly identify a ''starting point,'' or baseline amount, from which a reduction in operating subsidy caused by a reduction in appropriation can be calculated. In addition, as requested by the commenter, to avoid unintended impacts, HUD has revised the language in the final rule concerning a public housing agency's inability to meet its contractual obligations to mirror the phrasing in the statue.

Issue: HUD should propose to Congress legislation allowing deviations from Public Housing Requirements that do not rely on section 35 of the 1937 Act (42 U.S.C. 1437z–7).

HUD Response: HUD, through rulemaking, interprets and implements enacted legislation. The subject of proposing additional legislation is beyond the scope of this rulemaking process.

Issue: A commenter stated that the allowable deviations in the proposed rule are too limiting and unclear. For example, it is not clear if the ''increased public housing rents'' contemplated by proposed § 905.604(n)(2)(i) are different from those contemplated by proposed § 905.604(n)(2)(iii). More generally, HUD should not require a complicated sequencing of remedies; each situation will be different, and the paramount requirement for this rule is that it gives the PHA and owner the ability to design a restructuring plan appropriate to their circumstances.

Commenters objected to specific allowable deviations in the proposed rule. A commenter stated that limiting a rent increase under proposed § 905.604(n)(2)(iii) to the ''amount strictly needed'' is too inflexible. One commenter stated that the rule should not allow PHAs to eliminate eligibility restrictions altogether as contemplated in § 905.604(n)(2)(ii).

HUD Response: The allowable deviations are removed in this final rule in favor of a case-by-case approach, under which the Owner Entity will submit an Alternative Management Plan, which HUD will review.

Issue: HUD's annual reevaluation and approval of the transformation plan under proposed § 905.604(n)(5) should provide that, once the annual update is properly submitted, the existing plan remains in effect pending HUD action.

HUD Response: The intent is for the existing plan to remain in effect until HUD disapproves it or approves a change. This final rule revises § 905.604(k)(4) accordingly.

Issue: One commenter stated that the tenant protections in § 905.604(n)(2)(iv) should be limited to 2 years; otherwise, if a PHA has limited resources to relocate tenants, it may be unwilling to act and leave the mixed-finance owner without a remedy.

HUD Response: The proposed regulation at § 905.604(n)(2) is removed in this final rule. The regulation at § 905.604(k)(2)(ii)(C) addresses tenant protections and states that the responsibility for relocation is with the PHA or as included in the agreement between a PHA and the Owner Entity. The PHA should address this issue when negotiating its Regulatory and Operating Agreement with an Owner Entity.

Issue: The requirement in proposed § 905.604(n)(3)(iii)(D) that Public Housing Requirements be reinstated once the PHA restores operating subsidies to their normal level could be subject to misinterpretation, and deviations switch on and off from year to year.

HUD Response: HUD will consider providing additional guidance on the timing of reinstatement in the future, based on experience with this issue.

Issue: Proposed § 905.604(n)(3)(iv)(A) does not specify whether the reference to ''reduced allocation of operating subsidy'' refers to the subsidy provided by HUD or the subsidy passed through by the PHA.

HUD Response: The statute on which this section is based refers to reduced appropriations; what is meant is a reduction in appropriations resulting in a reduction of subsidy allocation. This final rule clarifies this point at § 905.604(k)(2)(iv)(B).

Issue: To ensure that project owners have pursued available alternative remedies prior to undertaking an Alternative Management Plan, the rule should require that project owners demonstrate that available development resources are being utilized to offset deficits with the public housing units.

HUD Response: Along with eliminating the allowed deviations and requiring the PHA to submit an Alternative Management Plan, this final rule includes such a provision as part of the supporting documentation that a PHA will submit with its an Alternative Management Plan (§ 905.604(k)(2)(iv)(D)).

Issue: One commenter states that proposed § 905.604(n)(3)(iv)(E), which requires prior expenditure of 50 percent of a named reserve, seems to contradict § 905.604(n)(2)(ii), which states that deviations from Public Housing Requirements are permitted only if the owner has expended all operating subsidy reserve funds put aside for this eventuality. A commenter states that this section should be eliminated, as requirements for operating reserves vary greatly in mixed-finance projects, and may not be appropriate for this use.

HUD Response: This final rule, at § 905.604(k)(2)(iv)(D), removes an expenditure of reserve requirement and states more generally that the owner entity must use ''all available means'' to offset the reduction in appropriation or change in applicable law, including the use of other public and private development resources, the use of cash flow from any nonpublic housing units, funds from other operating deficit reserves, and so forth.

Issue: A commenter states that to ensure that project owners have pursued available alternative remedies prior to undertaking an Alternative Management Plan, the rule should require that project owners demonstrate that available development resources are being utilized to offset deficits with the public housing units.

HUD Response: This final rule at § 905.604(k)(2)(iv)(D) requires the PHA to provide documentation that the Owner Entity has used all available means to offset the impact of reduced operating subsidy.

Issue: Commenter states that HUD's regulations implementing 35(h) of the 1937 Act (42 U.S.C. 1437z–7(h)) should take care to state that they do not affect, one way or the other, the ability of PHAs and their partners to restructure a project consistent with standard Public Housing Requirements.

HUD Response: That section only applies to deviations from statutory requirements under the conditions specified. It does not affect mixed-finance arrangements consistent with statute and regulation.

Issue: The word ''solely'' in proposed § 905.604(n)(3)(iv)(B)(''The deficit in operating revenues is attributable solely to the reduction in operating subsidy''), as such situations are likely to have multiple causes.

HUD Response: This final rule uses the term ''primarily'' instead of ''solely'' (§ 904.604(k)(2)(iv)(B)).

Issue: Deviations should be allowed for changes in law other than appropriations.

HUD Response: The statute allows for deviations in the case of a reduction in appropriations or other change in law that makes a PHA unable to fulfill its contractual obligations with respect to a specific number of public housing units. This final rule implements this statutory authority at § 905.604(k).

Issue: The reference to ''contractual agreement'' in § 905.604(n)(1) should be changed to ''Regulatory and Operating Agreement (R&O),'' which is more specific.

HUD Response: There may be instances where an agreement is not through an R&O.

Issue: A commenter states that implementation of ''transformation remedies'' (42 U.S.C. 1437z-7(h)) should be postponed until HUD has had broad discussions with stakeholders to ensure that appropriate protections remain in place for PHAs and residents. This commenter is particularly concerned about the potentially serious consequences of implementing a regulation that facilitates the loss of public housing units in the current political and economic environment.

HUD Response: HUD, at this time, cannot predict how many or which projects will require such deviations, and views that the greater risk is that, without an Alternative Management Plan under the statute and regulations, units will be permanently lost, where under transformation the deviation may be temporary. By removing in this final rule the proposed paragraph allowing deviations automatically under certain conditions, HUD will review each request and apply oversight to the process. HUD submits that this is the best choice under current conditions.

Issue: The proposed regulation at § 905.604(n) places the risk on PHAs regardless of the contractually agreed upon structure of a mixed-finance deal or the underlying business arrangement between a public housing authority and, for example, its private developer partner. The commenter states that one example is making the PHA responsible for tenant relocation, including moving costs (§ 905.604(n)(2)(iv)). This commenter states that in many mixed-finance transactions, investors require reserves to be sized, in part, to pay for relocation costs. Shifting responsibility to PHAs for such costs may not be part of existing deal structures and would result in a substantial realignment of risk in a mixed-finance transaction.

HUD Response: This final rule provides for required relocation according to the contractual agreement between the PHA and the Owner Entity (see § 905.604(k)(2)(ii)(C)).

Issue: The phrase ''in HUD's sole discretion'' should be removed from proposed § 905.604(n)(4). The commenter states that this phrase removes the issue from judicial review.

HUD Response: While HUD does not agree with the commenter regarding judicial review, this final rule clarifies the review of an Alternative Management Plan, in § 905.604(k)(3), by providing examples of some, but not all, of the reasons why HUD might disapprove an Alternative Management Plan.

Energy Conservation Requirements

Issue: Many PHA commenters stated that HUD should not mandate energy conservation measures without giving PHAs the flexibility to determine their own priorities. The rule should make it clear that PHAs are not required to implement everything recommended in an energy audit, but that energy needs must be balanced against other PHA needs. Many of these PHAs supported energy conservation, generally.

One commenter stated that if energy audits and their corresponding recommended energy conservation measures are to be relied upon clearly, established and standardized measurement systems should be established so that uniformity of results is achieved. If measurement standards and recommendations vary from audit to audit, Capital Funds could be continuously wasted from year to year based on the new and/or conflicting recommendations.

One commenter stated that HUD and industry would benefit from more research and discussion on this topic.

Other commenters stated that not all energy audits produce savings or are reliable and there could be burdens on PHAs. Some commenters stated that they are skeptical of a cost-effectiveness approach to spend Capital Funds.

Other commenters suggested use of a 20-year, voluntary rolling base freeze on public housing utility consumption levels.

One commenter questioned the cost effectiveness of energy conservation measures (ECMs), and also stated that there could be situations where an audit may find an ECM not to be cost effective, when in fact it is an improvement that the PHA should implement as part of a modernization. This commenter stated that return on investment (ROI) should always be a factor in determining whether or not it makes sense to implement a recommendation. Another commenter stated that in addition to ROI, health and safety, conflicting modernization schedules, and the validity of energy audit results need to be considered.

One commenter stated that it should be determined whether using the funds for the energy conservation measures now would take away from future development needs or be premature.

One commenter stated that energy trade-offs need to be easy to plan and implement, not burdensome and complicated.

One commenter stated that in determining which energy conservation measures should be implemented, it is important whether the item is something that would have been replaced anyway.

HUD Response: HUD is handling the energy audit process, ECMs, and ROI issues under a separate rulemaking (see the proposed rule of 76 FR 71287 *et seq.*). The 20-year rolling base freeze relates to the current Operating Fund rule at 24 CFR part 990 and is outside the scope of this rulemaking.

Issue: One commenter endorsed incorporating the International Energy Conservation Code (IECC) in various subsections of the proposed rule related to what types of projects are eligible for Capital Funds. The commenter suggested that HUD reference the 2009 IECC to promote energy efficiency over the life of those projects. One commenter stated that because the section specifies the required design and construction requirements for affected building projects, the International Building Code (IBC) and the IECC will also provide compliance with several other requirements listed in this section, including compliance with ASHRAE standard 90.1–2010, ''Energy Standard for Buildings Except Low-Rise Residential Buildings,'' an accepted alternative means of compliance with chapter 5 of the IECC.

HUD Response: This final rule references the 2009 edition of the IECC, in §§ 905.200 and 905.312, rather than the 2006 IECC, and references the ASHRAE standard.

Reductions in the Amount of Capital Funds for Management Improvements

Issue: Commenters expressed concern about limiting the amount of Capital Fund budget that can be used for management improvements to 10 percent. Although PHA's on average only use 8 percent, the flexibility to go up to 20 percent is important and has a significant upside without a corresponding downside; for instance where PHAs need multiple infusions of capital for management improvement purposes at the same time, which may occur when a PHA becomes near-troubled or troubled. Also, such flexibility might be needed in an emergency. PHAs rarely use too much of their Capital Fund for management improvement, and HUD provides a solution to a problem that does not exist. Often there are statutory restrictions that prevent overly high usage, such as using 50 percent. HUD has not provided evidence that PHAs are mismanaging their Capital Fund for nonconstruction activities. It is counterintuitive that in a period of underfunding of PHAs, HUD would introduce a proposal that limits flexibility, authorized under statute, for PHAs to administer their CFP to meet local needs.

PHAs need the flexibility to use limited funds to address the ever-growing capital improvements necessary to ensure continued assisted housing for low-income residents; therefore, the current rule should be kept as is.

A PHA may need additional assistance for training, consulting, information technology upgrades, or security services and, with the prospect of being forced to use reserves for operational expenses during the next fiscal year, the use of CFP for management improvements will be crucial. One PHA commenter cited the need to pay a resident coordinator.

Another commenter cited a possible need to upgrade computer systems and train users. Another commenter referenced ''investments in technology,'' community policing, and security measures. Another commenter cited the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) compliance, the Violence Against Women Act (VAWA) (Pub. L. 109–162, approved January 5, 2006), and the Limited English Proficiency programs.

Another commenter cited the funding environment and projections of flat or declining funding. Another commenter cited resident training and service goals, and suggested a 15 percent limit as more reasonable.

HUD Response: In a limited funding environment, HUD has the obligation to ensure that PHAs expend their funds to maintain their properties in good physical condition. HUD agrees that resident training and service are important goals. Capital Funds may be used for capital expenditures (hard costs) to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents, as well as for resident-related management improvements. It is important to mention this not only with respect to capital and management improvement funding, but also that, generally, Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u) requires, to the greatest extent feasible, that PHAs make their best efforts to ensure that employment and other economic opportunities generated by certain of HUD's Capital Fund- assisted activities are directed to low- and very-low-income persons, in accordance with 12 U.S.C. 1701u and HUD's Section 3 regulations at 24 CFR part 135.[3] Examples of such resident training and economic opportunities would be job training (e.g., painting and carpentry or computer skills and data entry) for residents and resident business development (e.g., painting contracting business or jobs in the PHA's offices, related to management assistance) for the purposes of carrying out activities related to the Capital Fund management or physical improvements. In addition, HUD has taken the public comments into consideration and revises the Management Improvements Policy in this final rule in order to allow PHAs more time for making any necessary adjustments. This final rule reduces the standard allowable percentage for management improvements from up to 20 percent to up to 10 percent for all PHAs over a 5-year period, rather than the 3 years proposed.

It should be noted that while some items mentioned by commenters are eligible expenses under the Capital Fund Program (CFP)—such as compliance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), housing counseling for residents and prospective residents, and the design and construction of accessibility improvements—others such as staffing for security services, VAWA, and Limited English Proficiency, are not. Based on the responses to the proposed changes to the Management Improvements Policy, it has become evident that there is confusion over what items are eligible management improvement activities; therefore, eligible and ineligible activities under management improvements have been clarified at §§ 905.200(b)(7) and 905.202(h), respectively.

It should also be noted that the commenter misunderstands HUD's policy to conserve scarce resources as a statement that PHAs are mismanaging their Capital Funds, which HUD has never contended. However, as a recent modernization study entitled ''Capital Needs in the Public Housing Program (available at *http://portal.hud.gov/hudportal/documents/huddoc?id=PH_Capital_Needs.pdf*) has shown, there are huge outstanding modernization needs (over $25 billion in 2010 dollars), and there has been insufficient regulation of the allocation of management funds.

[3] While 12 U.S.C. 1701u uses ''best efforts'' with respect to the efforts required of PHAs, their contractors and subcontractors and uses ''to the greatest extent feasible'' with respect to the efforts required of program assistance programs (e.g., housing and community development programs), HUD has determined that there is very little difference between these terms, and that the same level of effort is to be undertaken by HUD and all recipients and contractors regardless of the source of HUD financial assistance. That level of effort is ''to the greatest extent feasible.'' (See, 59 FR 33866, 33877, June 30, 1994).

One result has been that large amounts of management funds have been used to, for example, fund and operate security staff, which should be an operating expense. HUD's regulation in this area intends to ensure that in this difficult fiscal environment sufficient modernization funds are allocated for modernization needs.

Issue: The reduction of the amount for management improvements will cause an ''undue financial burden to PHAs.'' Resident Opportunities and Self Sufficiency (ROSS), Community Supportive Services, and HOPE VI are not formula grants, and there is no guarantee a PHA would be successful in its grant application to receive such funding. Without the full 20 percent management improvement funding, PHAs that do not receive Public Housing Drug Elimination Program (PHDEP) funds might have to cancel security and drug elimination programs. While the current Capital Fund formula does allow for the potential use an additional 20 percent of appropriated Capital Funds to be used for operations, not all PHA's elect to or are eligible to utilize this funding mechanism. Reducing the management improvement amount by 50 percent would be penalizing those PHAs that are not utilizing this option.

Another commenter stated that the ROSS program has become politically disfavored, and that HOPE VI funding will be eliminated. The commenter was skeptical of HUD equating the 20-percent use of Capital Funds for operations with the 20 percent use of Capital Funds for management improvements, while housing authorities cannot use 20 percent of Capital Funds for management improvements as they can for operations. The commenter also stated that the proposed rule ignores that public housing programs are underfunded and housing authorities will not benefit from further restrictions on funding that limits how they operate.

HUD Response: The purpose of limiting the management improvement percentage is to help ensure that the PHAs spend appropriate amounts on the basic task of providing decent, safe, and sanitary housing. HUD is aware that this change may require a period of time of adjustment for PHAs. Therefore, HUD is phasing in the 10 percent cap over 5 years rather than the 3 years proposed.

HUD agrees that funding for operations does not necessarily equate to funding for management improvements, although there may be some overlap and all large PHAs (250 units or greater) are eligible under the statute to use up to 20 percent of their annual Capital Fund grant for operations, as long as it is in the PHA Plan and the PHA does not have emergency conditions that need to be corrected immediately. However, generally, all PHAs are working under a limited funding environment under which they have a legal obligation to provide decent, safe, and sanitary housing. HUD believes that the course it has chosen—to limit the amount that can be taken from the Capital Fund and to provide flexibility for those PHAs that are clearly spending enough Capital Fund to maintain the physical condition of their property—is the best use of limited funding.

Issue: There should be a direct correlation of management improvements to improved program performance.

HUD Response: HUD believes as a general matter that the issue is not performance, but the proper allocation of limited Capital Funds. HUD believes that the bulk of those funds should go to capital needs, and that the vast majority of PHAs are not using and do not need to use, more than 10 percent for eligible management improvements.

Issue: Larger PHAs, in particular, may have higher management costs that require flexibility in their use of their grant, and so those PHAs with 250 or more units should be allowed to continue using 20 percent of the Capital Fund grant for management improvements.

HUD Response: The actual usage of management improvements indicates that most PHAs use 10 percent or less of their Capital Funds for eligible management improvements. However, because some PHAs do use more, HUD is allowing more time than proposed to phase in the cap. The 10 percent overall cap will be phased in over 5 years.

Issue: One commenter stated that the proposed rule should be modified to include specific accounting instructions for the way in which to properly assign the 10 percent to the Central Office Cost Center.

HUD Response: As an administrative rather than regulatory matter, HUD may address this issue in guidance, but not in this rulemaking.

Other Issues

Issue: Resident participation. While it is commendable for the rule to include resident participation costs as eligible costs under § 905.200(b)(8)(ii), it would be helpful for HUD to take some additional action on resident participation.

HUD Response: This final rule incorporates, at § 905.300(b)(3), the resident participation and resident advisory board requirements formerly in 24 CFR part 903.

Issue: Tenants should be able to access technical assistance to help them understand either the budget or structural issues. The commenter states that there should be support for technical assistance through a capital operating account and that technical assistance should be offered on the regional and national level.

HUD Response: Funding for additional technical assistance (there is currently limited technical assistance for RAB training) is outside the scope of this rulemaking. This is an issue of appropriations.

Issue: Commenters are concerned about the dates of implementation in the proposed rule.

HUD Response: The implementation dates for the DDTF and the RHF transition can be found in § 905.400(j)–(k) and the implementation date for management improvements will be in accordance with the effective date of the rule. The rule only applies prospectively.

Issue: Adding the Public Housing Development Program to the list of programs eligible for the Capital Fund program may have a negative effect by spreading already scarce funds to more places as this program includes mixed-finance development. The commenter stated that mixed-income finance development may not have as high a degree of need as the low-income housing and that possible renovations could be more expensive in those buildings because they are for people of higher economic standing.

HUD Response: As to the fact that development is an eligible expense under the Capital Fund, this is statutorily required under section 9(d)(1) of the 1937 Act (42 U.S.C. 1437g(d)(1)). As to the potential for higher costs of renovations in mixed-finance housing, HUD is not aware of any evidence of these higher costs, and development of public housing via mixed-finance development is subject to the same limitations on TDC and Housing Construction Costs as non-mixed-finance development of public housing.

Issue: A commenter disagreed with language under proposed § 905.400(d)(3)(ii), which stated that units with a DOFA date of October 1, 1991, or after, shall be considered to have zero existing modernization need. The commenter stated that it is more cost effective to maintain a unit than it is to renovate it to address deferred maintenance and delayed capital improvements or to replace it. The commenter stated that buildings will have capital needs in less than 20 years and need to accrue Capital Funds. Another commenter stated that the time frame for having existing modernization needs should be changed to 10 years.

HUD Response: This calculation was determined by the original negotiated rulemaking, and will not be revised in this rulemaking. However, HUD agrees that this is one of several components of the formula that should be reevaluated. Consequently, HUD is considering initiating another proposed rule to solely address the Capital Fund formula.

Issue: A commenter stated that there is a fundamental illogic in allocating 50 percent of Capital Funds to ''existing modernization needs,'' as defined, and 50 percent to ''accrual needs,'' as defined. Under the rule, a building constructed after 1991 would be deemed to have no modernization needs. The proportion of buildings in the public housing inventory that are more than 20 years old will decrease over time. Therefore, the inventory will be divided among an ever-smaller group of buildings, even as the post-1991 buildings age and become needier.

HUD Response: Similar to HUD's response to the preceding comment, these allocations are part of the original negotiated rulemaking and will not be revised in this rulemaking, but, as already noted, HUD is considering initiating another proposed rule on the Capital Fund formula.

Issue: A commenter stated that the proposed guidelines for site and neighborhood standards are overly rigid and unnecessarily restrictive. HUD should revise these standards to allow for PHAs to provide on-site replacement housing sufficient to meet community needs, regardless of the number of units previously existing on the site. The commenter also stated that the proposed requirement that sites used for replacement housing be accessible to necessary services through public transportation would not work in rural areas and small communities, where public transportation is limited or nonexistent.

HUD Response: It is HUD's responsibility to help ensure that some of the public housing that is demolished or disposed of is replaced, and to help ensure that there is sufficient public housing to serve the low-income community. As a result, PHAs, when submitting site acquisition or development proposals, are required to select sites that support this responsibility. HUD recognizes that each site selected for the construction or rehabilitation of public housing presents unique circumstances that reflect the neighborhood or community slated for the construction or rehabilitation. Consequently, HUD will balance the need for housing and the overall impact of the rehabilitation of public housing on residents when reviewing these development proposals against the site and neighborhood criteria identified in § 905.602(d). This final rule revises § 905.602(d)(9) to reflect the commenter's concern about lack of public transportation in rural areas.

Issue: A commenter stated that the standard in § 905.602(d)(5)(ii) should be revised to insert the phrase ''public housing'' to read:

> . . . the number of public housing units being constructed is the minimum number needed to house current residents that want to remain at the site, so long as the number of [public housing] units is significantly fewer than the number being demolished . . .

HUD Response: HUD agrees with this clarification and this final rule makes the suggested revision.

Issue: It is unclear what is meant by § 905.306(b), ''Items and costs.''

HUD Response: This term refers to items and costs listed in the PHA's budget and Capital Fund 5-Year Action Plan. To be obligated, these items and costs must meet the definition of ''obligation'' found in § 905.108.

Issue: HUD should include in §§ 905.306 and 905.310 the authorization found in section 35(b)(1) of the 1937 Act, 42 U.S.C. 1437z–7(b)(1) for a PHA to deposit funds in an escrow account in order to collateralize construction financing, whether through a bond issue or otherwise. The commenter states that escrow is a crucial technique for obtaining 4 percent Low Income Housing Tax Credits (LIHTC), in particular. In addition, the regulation should state explicitly that deposit into the escrow account constitutes expenditure for all deadline purposes.

HUD Response: To put this authority into effect, the statutory language requires HUD to issue regulations. HUD will consider doing so in the future.

Issue: The § 905.304(a) requirement to record a Declaration of Trust on ''all public housing property'' is vague. The commenter suggests reference to a Declaration of Trust recorded against real property on which a public housing project is located.

HUD Response: The phrase ''all public housing property'' is an appropriate phrase that accurately covers both the PHA's land and improvements, each of which must be subject to the Declaration of Trust.

Issue: HUD's proposed regulation at § 905.304(a)(3) requires projects receiving operating fund assistance to operate as public housing for the following 10 years, ''except as permitted by HUD by an exception.'' This rule should provide operating-fund-only projects with the maximum flexibility permitted by the 1937 Act to cease public housing operations if subsidies are reduced or suspended.

HUD Response: Each situation should be evaluated and determined by its own merits. A broad exception for an entire class of projects does not sufficiently protect the public interest.

Issue: The rule should remove references to Public Housing Development and Major Reconstruction of Obsolete Projects (MROP) funding, which program no longer exists.

HUD Response: PHAs still have unobligated balances in Public Housing Development and MROP grants, and so MROP cannot yet be removed from the rule.

Issue: The rule should be revised to provide that Moving to Work (MTW) agencies shall submit plans for expenditures of their Capital Funds pursuant to the terms of their MTW agreements, and any contrary requirements in the regulations will not apply to MTW PHAs.

HUD Response: HUD's proposed regulation at § 905.300(b)(10) has been revised at this final rule to incorporate guidance on MTW agencies providing the Capital Fund submission information through the MTW plan.

Issue: PHA performance should be rewarded with respect to timely obligation and expenditure of funds.

HUD Response: Timely obligating and expending funds simply means that a PHA is meeting the statutory legal requirements of 42 U.S.C. 1437g(j). HUD does not agree that PHAs should be rewarded for meeting basic legal requirements.

Issue: Terminology should be updated to reflect changes in asset management and project-level accounting.

HUD Response: HUD believes this final rule uses the appropriate terminology.

Issue: One commenter asked for clarification of whether § 905.312(b), on inspections of work in progress and goods delivered, applies only to mixed-income developments.

HUD Response: The section applies to both mixed-finance and public housing development.

Issue: One commenter objected to the fact that § 905.700, ''Other security interests,'' may be read to require HUD approval of transactions that provide recourse to nonpublic housing property of a PHA.

HUD Response: HUD's regulation at § 905.700 implements the statutory language at section 30 of the 1937 Act, 42 U.S.C. 1437z–2, which states that HUD, upon such terms and conditions as it may prescribe, may authorize a PHA to ''mortgage or otherwise grant a security interest in any public housing project or other property of the PHA.''

VI. Incorporation by Reference

42 U.S.C. 12709 requires HUD to adopt energy efficiency standards that meet or exceed the requirements of the 2006 International Energy Conservation Code (hereafter in this section referred to as ''the 2006 IECC''), or, in the case of multifamily high-rises, the requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1–2004. This statute also provides for the updating of those standards by adopting amended standards. Accordingly, the following updated standards are incorporated by reference in § 905.110 of this final rule with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51:

- ASHRAE 90.1–2010, ''Energy Standard for Buildings Except Low-Rise Residential Buildings.''
- The 2009 International Energy Conservation Code (IECC).

All approved material may be obtained from the organization that developed the standard. These standards also are available for inspection at HUD's Office of Policy Development and Research, Affordable Housing Research and Technology Division, Department of Housing and Urban Development, telephone number 202–708–4370 (this is not a toll-free number). In addition, the standards are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Other resources are:

- ASHRAE 90.1–2010, ''Energy Standard for Buildings Except Low-Rise Residential Buildings,'' by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1791 Tulle Circle NE., Atlanta, GA 30329 (*http://www.ashrae.org/standards-research-technology/standards-guidelines*), and
- The 2009 International Energy Conservation Code (IECC) by the International Code Council, 500 New Jersey Avenue NW., 6th Floor, Washington, DC 20001 (1–888–422–7233) (*http://www.iccsafe.org/Store*).

The incorporated standards are found in this final rule at §§ 905.200(b)(6)(ii) and 905.312(b)(1).

VII. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

With respect to Executive Order 12866, it is determined that this final rule would not have any impact on the level of funding for the CFP—which level is determined by annual congressional appropriations—but would potentially create some financial transfers among program participants. The total amount of transfers is estimated to be less than $100 million annually, with most of the transfers being interagency transfers attributable to the Demolition or Disposition Transitional Funding (DDTF). However, the benefits of the rule such as regulatory consolidation, program clarification, removal of obsolete references, and enhanced efficiencies, justify the rule regardless of the transfers of funding involved.

A summary of the changes made to the proposed rule at the final rule stage can be found in the preamble of the final rule. These changes can be aggregated in two groups:

1. Revision of Definitions and Other Clarifications

The final rule accommodates changes to definitions and provides other clarifications in response to public comments on the proposed rule, and further consideration of the issues by HUD. These actions bring much needed clarity to the Capital Fund Program.

For example, the proposed definition of ''Capital Fund Annual Contributions Contract (CF ACC)'' appeared to conflate the definition of the entire ACC (which is a contract addressing the operation of public housing) with that of a Capital Funds amendment (presumably limited to the special terms applicable to the provision of Capital Funds). To avoid possible ambiguity, this final rule modifies the proposed definition of CF ACC to more clearly indicate that this is an amendment to the Consolidated Annual Contributions Contract.

2. Program Requirements

A. Management Improvement

The proposed rule called for the gradual phase down of the management improvements funding limit from up to 20 percent to up to 10 percent over a period of 3 fiscal years. This final rule extends the phase-in over a 5-year time period. Following the phase down all PHAs would be limited to using up to 10 percent for management improvements. The 20 percent standard was implemented by regulation; it is not a statutory limitation.

HUD has determined, using 2008 data, that approximately 440 of the 3129 PHAs expended in excess of 10 percent of their Capital Funds for management improvements, corresponding to a total of $28.4 million. That sum represents an approximation of the amount of funding currently allocated to management improvements that effectively would be transferred to other eligible Capital Funds activities.

HUD notes, however, that collectively and on average, PHAs expend well below the 10 percent threshold. Still using the 2008 data, $2.14 billion was distributed by formula to PHAs under the Capital Fund Program. Of that amount, only $99,693,783, or about 4.65 percent, was expended by PHAs for management improvements. Overall, the average amount expended by PHAs for management improvements was 8.1 percent.

These results suggest that the potential transfer of $28.4 million would be observed at the level of each individual PHA. Collectively, and for the program as a whole, there would not be any transfers since PHAs, on an average, budget less than 10 percent for management improvements.

In reviewing the impact of HUD's 10 percent cap on management improvements, it is important to note that the cap does not imply a cost to the PHAs or a reduction in funding. With the limit, PHAs with a management improvements budget over 10 percent of their annual Capital Fund allocation will simply have to realign their budget over a 5 year period and transfer the excess to other eligible capital fund activities within the PHA.

There is also no cost to be borne by PHAs and there is no reduction of the annual Capital Fund allocation to the PHA when the limit becomes effective. Further, there should be no disruption of activities already planned and included in the PHA plan. In this regard, it should be noted that Capital Fund expenditures are guided by the PHA's 5-year plan and annual statement, which describe the work to be carried out in the budget year. The fact that this final rule calls for a phase-down over 5 years mitigates any adverse programmatic impact to the PHA and allows work items already budgeted to be funded using management improvements funds to be completed, if the PHA so desires.

The restriction established by this rule is that no new work items in excess of 10 percent of the PHA's annual Capital Fund allocation would be approved using management improvements funds. The limitation and the priority change will leave a larger percentage of the PHA's annual Capital Fund grant available to be used for physical improvements, and will cause a transfer from and to an economic agent outside of the PHAs. Traditionally, PHAs spend management improvement funds on management information systems equipment, resident initiatives, etc. Stakeholders in these lines of business may see a reduction of activities from PHAs that routinely budget more than 10 percent to management improvements, as a result of the 10 percent limit.

Nevertheless, the potential benefit for capping the management improvements budget to 10 percent, down from 20 percent is to target the bulk of the capital funds to other capital fund—eligible activities, such as physical improvements. Recent studies, such as the Capital Needs Assessment, have stressed an urgent need for additional funding for physical improvements.

B. Capital Fund Formula

This proposed rule proposes the phase-down of the Replacement Housing Factor (RHF) from a 10-year long RHF program to a 5-year RHF program for PHAs that remove units from the inventory based on demolition or disposition.

The final rule establishes 5 years of a DDTF grant that will be included in the regular Capital Fund formula grant. The modification would alter the distribution of funds amongst program participants and thus create some inter-agency transfers. It should be noted that the main difference at this stage is on the way funds are distributed to eligible PHAs and the eligible use of funds. The DDTF grant will not be subject to the same requirements as the RHF grant, and it will allow PHAs to fund modernization as well as development, and fund any eligible activity under the Capital Fund Program. The need for more modernization is quantified in a study released in June 2011 on modernization needs, ''Capital Needs in the Public Housing Program,'' prepared by Abt Associates, available at *http://portal.hud.gov/hudportal/documents/huddoc?id=PH_Capital_Needs.pdf.* The study found that the Nation's 1.2 million public housing units have an estimated total of $25.6 billion in existing capital needs.

This final rule will also have significant benefits. This rule updates and consolidates the Capital Fund Program regulations and related regulations having to do with the use of Capital Funds for development and modernization, as well as regulations for continuing operation of low-income housing after completion of debt service. In addition, the rule codifies recent statutory requirements enacted in HERA. The benefits of the rule, such as regulatory consolidation, program clarification, removal of obsolete references, and enhanced efficiencies, make the rule necessary. Although HUD established the Capital Fund formula in 2000, HUD has continued to rely on Capital Fund Program requirements to the extent that these requirements were not superseded by statutory requirements.

The update in energy standards is made on the basis of a review of analysis prepared pursuant to the Energy Independence and Security Act (Pub. L. 110–140, approved December 19, 2007) showing that the average simple payback is 3.45 years for the energy savings resulting from implementing IECC 2009 to equal the incremental cost of the improvements.[4] This payback period is significantly less than the useful life of affected components and as a result the benefits of compliance with IECC 2009 outweigh the costs. It is noted that regardless of HUD's determination, 37 states have adopted IECC 2009 or IECC 2012, making the current HUD IECC 2006 standard moot in those states in addition to others, such as California, that enforce a stricter state standard than IECC. Generally, the IECC establishes baseline expectations for energy efficiency that consumers can rely upon as a matter of public policy. Without the requirement of the IECC to implement baseline energy conservation measures, real estate owners in both the public and private sectors generally would not implement energy conservation solely on the basis of energy savings. This is because the incentive for such measures in the form of cost savings often does not accrue to the entity implementing the energy conservation measure, creating a misplaced incentive. If there are market failures or barriers that are not reflected in the return of the investment, then the market penetration of energy-efficient investment will be less than optimal. Consistent with the search cost approach to imperfect information, landlords have a reduced incentive to provide energy-efficient appliances to their tenants.[5]

It is determined that this final rule is not economically significant. This final rule accommodates changes made to the proposed rule in response to public comments and other consideration of issues by HUD. Like the proposed rule, this final has the potential to generate some transfers caused by the modification of the formula grant to accommodate the introduction of the DDTF. Notwithstanding, the rule will yield some substantial benefits such as regulatory consolidation, program clarification, and removal of obsolete references.

With respect to Executive Order 13563, the preamble has demonstrated that, in response to public comment, and following further consideration of the issues by HUD, components of the Capital Fund regulations have been made more flexible and less burdensome.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free

[4] Zachary Pachette, John Miller, Mike DeWein, *Incremental Construction Cost Analysis for New Homes,* Building Code Assistance Project, Updated June 2011. (Retrieved from: *http://bcap-ocean.org/incremental-cost-analysis*).

[5] Allcott, Hunt and Michael Greenstone, 2012, ''Is there an Energy-Efficiency Gap?'' National Bureau of Economic Research, Working Paper 17766; Gillingham, Kenneth, Matthew Harding, and David Rapson. 2012. ''Split Incentives and Household Energy Consumption.'' *Energy Journal* 33 (2): 37–62.

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number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free at 800–877–8339.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted for review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection requirements for the Capital Fund program are assigned OMB control numbers 2577–0157, 2577–0226, 2577–0265, and 2577–0275. The information collection requirements in this final rule include largely pre-existing information collection requirements. However, the information collection requirements of some preexisting forms are being revised to reduce the paperwork burden. Specifically, the information collection requirements in this rule reflect a decrease of 32,222 burden hours from the preexisting forms. This decrease reflects statutory changes enacted by sections 2701 and 2702 of the Small PHA Paperwork Reduction Act, title VII of the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008). Specifically, HERA excepts qualified PHAs from the requirement of section 5A of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) to prepare and submit an Annual PHA Plan. Qualified PHAs under HERA are defined as those PHAs with less than 550 public housing units and Housing Choice Vouchers (HCV) combined that are not in troubled performance status. This provision significantly reduces the paperwork burdens and associated costs for qualified PHAs, which represent approximately 68 percent of the PHAs that administer public housing programs. Under HERA, qualified PHAs are exempt from preparing and submitting a PHA Annual Plan and are only required to submit the 5-Year PHA Plan once every 5 years. The sections in this rule that contain the current information collection requirements and the upcoming revisions that are awaiting OMB approval, as well as the estimated adjusted burden of the pending revisions, are set forth in the following table.

CFR Section (related forms referenced)	Number of respondents	Total annual responses	Average hours per response	Total annual burden hours
§ 905.604(k), Transition Plan, OMB Control No. 2577–0275	920	920	18.46	16,980
§ 905.300(b)(8) Annual Statement/Performance and Evaluation Report, HUD form 50075.1, OMB Control No. 2577–0265, current	3,163	3,163	8	25,304
§ 905.300(b)(8) Annual Statement/Performance and Evaluation Report, HUD form 50075.1, OMB Control No. 2577–0265, pending approval	1,551	1,551	4.18	6488
§ 905.300(b)(1) Capital Fund 5-Year Action Plan, HUD form 50075.2, OMB Control No. 2577–0226, current	3,163	3,163	3.00	9489
§ 905.300(b)(1) Capital Fund 5-Year Action Plan, HUD form 50075.2, OMB Control No. 2577–0226, pending approval	1,551	1,551	2.09	3,244
§ 903.3 PHA 5-Year and Annual Plan, HUD form 50075, OMB Control No. 2577–0226, current	4,139	4,139	4.28	17,719
§ 903.3 PHA 5-Year and Annual Plan, HUD form 50075, OMB Control No. 2577–0226, pending approval	4,053	4,053	2.6	10,558
Total current burden hours				52,512
Total burden hours once pending forms are approved				20,290

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information.

The docket file is available for public inspection. For information or a copy of the paperwork package submitted to OMB, contact: Colette Pollard at 202–708–0306 (this is not a toll free number) or via email at *Colette.Pollard@hud.gov.* In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and remains applicable to this final rule. The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service, at toll-free 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule reflects the transition from PHA-wide accounting to an asset management model, and therefore changes some of the language regarding the Capital Fund formula to reflect the new accounting model. The only significant change in the Capital Fund formula calculation is a proposal to limit the number of years a PHA is eligible to receive RHF grants to replace units removed from the inventory by demolition, disposition, or homeownership from 10 years to 5 years. The Capital Fund formula amount that is freed up because of fewer RHF grants will cause an increase in the amount of Capital Funds available to the remainder of the PHAs, which includes a large number of small PHAs. Since most small PHAs do not demolish or dispose of a significant number of public housing units, reducing RHF eligibility to 5 years should benefit small PHAs. Therefore, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance numbers for 24 CFR parts 905, 941, 968, and 969 are 14.850, 14.872, 14.882, 14.883.

List of Subjects

24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs—housing and community development, Incorporation by reference, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 969

Grant programs—housing and community development, Low and moderate income housing, and Public housing.

Accordingly, for the reasons stated in the preamble, under the authority of 42 U.S.C. 3535(d), HUD amends 24 CFR chapter IX as follows:

PART 903—PUBLIC HOUSING AGENCY PLANS

■ 1. The authority citation for part 903 is revised to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 1437c–1; Pub. L. 110–289; 42 U.S.C. 3535d.

■ 2. Revise § 903.3 to read as follows:

§ 903.3 What is the purpose of this subpart?

(a) This subpart specifies the requirements for PHA plans, required by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1) (the Act), as amended.

(b) The purpose of the plans is to provide a strategic planning framework for PHA management operations and capital planning:

(1) Local accountability; and

(2) An easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

(c) Title VII of the Housing and Economic Reform Act, Public Law 110–289, section 2702, amends 42 U.S.C. 1437c–1(b) to provide qualified PHAs an exemption from the requirement of section 5A of the Act to submit an annual PHA Plan. The term ''qualified PHA'' means a public housing agency that meets the following requirements:

(1) The sum of the number of public housing dwelling units administered by the agency, and the number of vouchers under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) administered by the agency, is 550 or fewer; and

(2) The agency is not designated under section 42 U.S.C. 1437d(j)(2) as a troubled public housing agency, and does not have a failing score under SEMAP during the prior 12 months.

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

■ 3. The authority citation for part 905 is revised to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, 42 U.S.C. 1437z–7, and 3535(d).

■ 4. Revise subpart A to read as follows:

Subpart A—General

Sec.

Subpart A—General

§ 905.100 Purpose, general description, and other requirements.

(a) *Purpose.* The Public Housing Capital Fund Program (Capital Fund Program or CFP) provides financial assistance to public housing agencies (PHAs) and resident management corporations (RMC) (pursuant to 24 CFR 964.225) to make improvements to existing public housing. The CFP also provides financial assistance to develop public housing, including mixed-finance developments that contain public housing units.

(b) *General description.* Congress appropriates amounts for the Capital Fund in HUD's annual appropriations. In order to receive a Capital Fund grant, the PHA must:

(1) Validate project-level information in HUD's data systems, as prescribed by HUD;

(2) Have an approved CFP 5-Year Action Plan;

(3) Enter into a Capital Fund Annual Contributions Contract (CF ACC) Amendment to the PHA's Annual Contributions Contract (as defined in 24 CFR 5.403) with HUD; and

(4) Provide a written certification and counsel's opinion that all property receiving Capital Fund assistance is under a currently effective Declaration of Trust (DOT) and is in compliance with the CF ACC and the Act.

(c) *Informational requirements.* Section 905.300 of this part describes the information to be submitted to HUD for the CFP. HUD uses the CF formula set forth in § 905.400 of this part, along with data provided by the PHA and other information, including, but not limited to, the high-performance information from the Real Estate Assessment Center (REAC) and location cost indices, to determine each PHA's annual grant amount. HUD notifies each PHA of the amount of the grant and provides a CF ACC Amendment that must be signed by the PHA and executed by HUD in order for the PHA to access the grant. After HUD executes the CF ACC Amendment, the PHA may draw down funds for eligible costs that have been described in its CFP Annual Statement/Performance and Evaluation Report or CFP 5-Year Action Plan.

(d) *Eligible activities.* Eligible Capital Fund costs and activities as further described in subpart B of this part include, but are not limited to, making physical improvements to the public housing stock and developing public housing units to be added to the existing inventory. With HUD approval, a PHA may also leverage its public housing inventory by borrowing additional capital on the private market and pledging a portion of its annual Capital Funds for debt service, in accordance with § 905.500 of this part.

(e) *Obligation and expenditure requirements.* A PHA must obligate and expend its Capital Funds in accordance with § 905.306 of this part. The PHA will directly employ labor, either temporarily or permanently, to perform work (force account) or contract for the required work in accordance with 24 CFR part 85. Upon completion of the work, the PHA must submit an Actual Modernization Cost Certificate (AMCC) or Actual Development Cost Certificate (ADCC) and a final Performance and Evaluation Report (in accordance with § 905.322 of this part) to HUD to close out each Capital Fund grant.

(f) *Financing and development.* Section 905.500 of this part regulates financing activities using Capital Funds and Operating Funds. Section 905.600 of this part contains the development requirements, including those related to mixed-finance development, formerly found in 24 CFR part 941. Section 905.700 of this part describes the criteria for the use of Capital Funds for other security interests. Section 905.800 of this part addresses PHA compliance with Capital Fund requirements and HUD capability for review and sanction for noncompliance.

§ 905.102 Applicability.

All PHAs that have public housing units under an Annual Contributions Contract (ACC), as described in 24 CFR 5.403, are eligible to receive Capital Funds.

§ 905.104 HUD approvals.

All HUD approvals required in this part must be in writing and from an official designated to grant such approval.

§ 905.106 Compliance.

PHAs or owner/management entities or their partners are required to comply with all applicable provisions of this part. Execution of the CF ACC Amendment, submissions required by this part, and disbursement of Capital Fund grants from HUD are individually and collectively deemed to be the PHA's certification that it is in compliance with the provisions of this part and all other Public Housing Program Requirements. Noncompliance with any provision of this part or other applicable requirements may subject the PHA and/or its partners to sanctions contained in § 905.804 of this part.

§ 905.108 Definitions.

The following definitions apply to this part:

1937 Act. The term ''1937 Act'' is defined in 24 CFR 5.100.

Accessible. As defined in 24 CFR 8.3.

ACC. The Annual Contributions Contract between HUD and a PHA covering a public housing project or multiple public housing projects.

ACC Amendment. An Amendment to the ACC to reflect specific changes made to a PHA's public housing inventory or funding. An ACC Amendment may be a Capital Fund ACC Amendment, a Mixed-Finance ACC Amendment, a Capital Fund Financing ACC Amendment, or other form of amendment specified by HUD.

Additional Project Costs. The sum of the following HUD-approved costs related to the development of a public housing project, which are not included in the calculation of the Total Development Cost (TDC) limit, but are included in the maximum project cost as stated in § 905.314(b). Additional project costs include the following:

(1) Costs for the demolition or remediation of environmental hazards associated with public housing units that will not be rebuilt on the original site; and

(2) Extraordinary site costs that have been verified by an independent state-registered, licensed engineer (e.g., removal of underground utility systems; replacement of off-site underground utility systems; extensive rock and/or soil removal and replacement; and amelioration of unusual site conditions, such as unusual slopes, terraces, water catchments, lakes, etc.); and

(3) Cost effective energy-efficiency measures in excess of standard building codes.

Capital Fund (CF). The fund established under section 9(d) of the 1937 Act (42 U.S.C.) 1437g(d).

Capital Fund Annual Contributions Contract Amendment (CF ACC). An amendment to the Annual Contributions Contract (ACC) under the 1937 Act between HUD and the PHA containing the terms and conditions under which the Department assists the PHA in providing decent, safe, and sanitary housing for low-income families. The CF ACC must be in a form prescribed by HUD, under which HUD agrees to provide assistance in the development, modernization, and/or operation of a low-income housing project under the 1937 Act and the PHA agrees to modernize and operate the project in compliance with all Public Housing Requirements.

Capital Fund Program Fee. A fee that may be charged to a Capital Fund grant by the PHA to cover costs associated with oversight and management of the CFP by the PHA Central Office Cost Center (COCC). These costs include duties related to general capital planning, preparation of the Annual Plan, processing of the Line of Credit Control System (LOCCS), preparation of reports, drawing of funds, budgeting, accounting, and procurement of construction and other miscellaneous contracts. The CFP fee is the administrative cost for managing a Capital Fund grant for a PHA subject to asset management.

Community Renewal Costs. Community Renewal Costs consist of the sum of the following HUD-approved costs related to the development of a public housing project: planning (including proposal preparation); administration; site acquisition; relocation; demolition of—and site remediation of environmental hazards associated with—public housing units that will be replaced on the project site; interest and carrying charges; off-site facilities; community buildings and nondwelling facilities; contingency allowance; insurance premiums; any initial operating deficit; on-site streets; on site utilities; and other costs necessary to develop the project that are not covered under the Housing Construction Cost (HCC). Public housing capital assistance may be used to pay for Community Renewal Costs in an amount equivalent to the difference between the HCC paid for with public housing capital assistance and the TDC limit.

Cooperation agreement. An agreement, in a form prescribed by HUD, between a PHA and the applicable local governing body or bodies that assures exemption from real and personal property taxes, provides for local support and services for the development and operation of public housing, and provides for PHA payments in lieu of taxes (PILOT).

Date of Full Availability (DOFA). The last day of the month in which substantially all (95 percent or more) of the units in a public housing project are available for occupancy.

Declaration of Restrictive Covenant. The Declaration of Restrictive Covenant is a legal instrument that binds the PHA and the Owner Entity to develop mixed-finance projects in compliance with Public Housing Requirements and restricts disposition of the property, including transferring, conveying, assigning, leasing, mortgaging, pledging or otherwise encumbering the property.

Declaration of Trust (DOT). A legal instrument that grants HUD an interest in public housing property. It provides public notice that the property must be operated in accordance with all public housing federal requirements, including the requirement not to convey or otherwise encumber the property unless expressly authorized by federal law and/or HUD.

Development. Any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment in connection with a public housing project.

Emergency work. Capital Fund related physical work items that if not done pose an immediate threat to the health or safety of residents, and which must be completed within one year of funding. Management Improvements are not eligible as emergency work and therefore must be covered by the CFP 5-Year Action Plan before the PHA may carry them out.

Energy audit. A systematic review of the energy requirements and consumption for property with the intent to identify potential opportunities for energy and water savings through improved operational efficiency or more efficient components.

Expenditure. Capital Funds disbursed by the PHA to pay for obligations incurred in connection with work included in a CFP 5-Year Action Plan that has been approved by the PHA Board of Commissioners and HUD. Total funds expended means cash actually disbursed and does not include retainage.

Federal Fiscal Year (FFY). The Federal Fiscal Year begins each year on October 1 and ends on September 30 of the following year.

Force account labor. Labor employed directly by the PHA on either a permanent or a temporary basis.

Fungibility. As it relates to the Capital Fund Program, fungibility allows the PHA to substitute work items between any of the years within the latest approved CFP 5-Year Action Plan, without prior HUD approval.

HCC. The sum of the following HUD-approved costs related to the development of a public housing project: dwelling unit hard costs (including construction and equipment), builder's overhead and profit, the cost of extending utilities from the street to the public housing project, finish landscaping, and the payment of Davis-Bacon wage rates.

Line of Credit Control System (LOCCS). LOCCS is a HUD grant disbursement system. LOCCS currently provides disbursement controls for over 100 HUD grant programs. LOCCS-Web is an intranet version of LOCCS for HUD personnel. eLOCCS is the Internet link to LOCCS data for HUD business partners.

Mixed-finance modernization. Use of the mixed-finance method of development to modernize public housing projects described in § 905.604.

Modernization. Modernization means the activities and items listed in § 905.200(b)(4–18).

Natural disaster. An extraordinary event, such as an earthquake, flood, or hurricane, affecting only one or few PHAs, but excluding presidentially declared emergencies and major disasters under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq*).

Obligation. A binding agreement for work or financing that will result in outlays, immediately or in the future. All obligations must be incorporated within the CFP 5-Year Action Plan that has been approved by the PHA Board of Commissioners and HUD. This includes funds obligated by the PHA for work to be performed by contract labor (i.e., contract award), or by force account labor (i.e., work actually started by PHA employees). Capital Funds identified in the PHA's CFP 5-Year Action Plan to be transferred to operations are obligated by the PHA once the funds have been budgeted and drawn down by the PHA. Once these funds are drawn down they are subject to the requirements of 24 CFR part 990.

Open grant. Any grant for which a cost certificate has not been submitted and which has not reached fiscal closeout as described in § 905.322 of this part.

Operating fund. Assistance provided under 24 CFR part 990 pursuant to section 9(e) of the 1937 Act (42 U.S.C. 1437g(e)) for the purpose of operation and management of public housing.

Owner entity. An entity that owns public housing units. In mixed-finance development, the Owner Entity may be the PHA, or may be an entity in which the PHA owns a partial interest, or may be an entity in which the PHA has no ownership interest. The Owner Entity is subject to the applicable requirements of this subpart.

Partner. A third-party entity with which the PHA has entered into a partnership or other contractual arrangement to provide for the mixed-finance development of public housing units pursuant to this subpart. The partner has primary responsibility with the PHA for the development and/or operation of the public housing units and is subject to the applicable requirements of subpart F of this part.

Physical Needs Assessment (PNA). A systematic review of all the major physical components of property to result in a long-term schedule for replacement of each component and estimated capital costs required to meet the replacement need.

PIH Information Center (PIC). PIH's current system for recording data concerning: the public housing inventory, the characteristics of public housing and Housing Choice Voucher —assisted families, the characteristics of PHAs, and performance measurement of PHAs receiving Housing Choice Voucher funding.

Public Housing Agency (PHA). Any state, county, municipality, or other governmental entity or public body or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of public housing under this part.

Public Housing Assessment System (PHAS). The assessment system under 24 CFR part 902 for measuring the properties and PHA management performance in essential housing operations, including rewards for high performers and consequences for poor performers.

Public housing capital assistance. Assistance provided by HUD under the Act in connection with the development of public housing under this part, including Capital Fund assistance provided under section 9(d) of the Act, public housing development assistance provided under section 5 of the Act, Operating Fund assistance used for capital purposes under section 9(g)(2) or 9(e)(1)(I) (with HUD's approval of such financing of rehabilitation and development of public housing units) of the Act, and HOPE VI grant assistance.

Public housing funds. Any funds provided through the Capital Fund or Other Public Housing Development Sources, such as HOPE VI, Choice Neighborhoods, Development Funds, disposition proceeds that a PHA may realize under section 18 of the 1937 Act (42 U.S.C. 1437p), or any other funds appropriated by Congress for public housing.

Public housing project. The term ''public housing'' means low-income housing, and all necessary appurtenances thereto, assisted under the 1937 Act, other than assistance under 42 U.S.C. 1437f of the 1937 Act (section 8). The term ''public housing'' includes dwelling units in a mixed-finance project that are assisted by a public housing agency with public housing capital assistance or Operating Fund assistance. When used in reference to public housing, the term ''project'' means housing developed, acquired, or assisted by a PHA under the 1937 Act, and the improvement of any such housing.

Public housing requirements. All requirements applicable to public housing including, but not limited to, the 1937 Act; HUD regulations; the Consolidated Annual Contributions Contract, including amendments; HUD notices; and all applicable federal statutes, executive orders, and regulatory requirements, as these requirements may be amended from time to time.

Reasonable cost. An amount to rehabilitate or modernize an existing structure that is not greater than 90 percent of the TDC for a new development of the same structure type, number, and size of units in the same market area. Reasonable costs are also determined with consideration of HUD regulations including 24 CFR part 85, and 2 CFR part 225 (codifying OMB Circular A–87).

Reconfiguration. The altering of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units).

Uniform Federal Accessibility Standards (UFAS). As defined in 24 CFR 8.32; see also 24 CFR part 40.

§ 905.110 Incorporation by reference.

(a) Certain material is incorporated by reference into this part, with the approval of the Director of the **Federal Register**, under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, HUD must publish notice of change in the **Federal Register** and the material must be available to the public. Incorporated material is available from the sources listed below and is available for inspection at HUD's Office of Policy Development and Research, Affordable Housing Research and Technology Division, Department of Housing and Urban Development, telephone number 202–408–4370 (this is not a toll-free number). This material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 (this is not a toll-free number) or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1791 Tulle Circle NE., Atlanta, GA 30329 (*http://www.ashrae.org/standards-research-technology/standards-guidelines*).

(1) ASHRAE 90.1–2010, ''Energy Standard for Buildings Except Low-Rise Residential Buildings,'' copyright 2010, IBR approved for §§ 905.200(b) and 905.312(b) of this part.

(2) [Reserved].

(c) International Code Council, 500 New Jersey Avenue NW., 6th Floor, Washington, DC 20001.

(1) International Energy Conservation Code (IECC), January 2009, IBR approved for §§ 905.200(b) and 905.312(b).

(2) [Reserved].

■ 5. Add subparts B, C, and D to read as follows:

Subpart B—Eligible Activities

Sec.
905.200 Eligible activities.
905.202 Ineligible activities and costs.
905.204 Emergencies and natural disasters.

Subpart C—General Program Requirements

905.300 Capital fund submission requirements.
905.302 Timely submission of the CF ACC amendment by the PHA.
905.304 CF ACC term and covenant to operate.
905.306 Obligation and expenditure of Capital Fund grants.
905.308 Federal requirements applicable to all Capital Fund activities.
905.310 Disbursements from HUD.
905.312 Design and construction.
905.314 Cost and other limitations.
905.316 Procurement and contract requirements.
905.318 Title and deed.
905.320 Contract administration and acceptance of work.
905.322 Fiscal closeout.
905.324 Data reporting requirements.
905.326 Records.

Subpart D—Capital Fund Formula

905.400 Capital Fund formula (CF formula).

Subpart B—Eligible Activities

§ 905.200 Eligible activities.

(a) *General.* Activities that are eligible to be funded with Capital Funds as identified in this section include only items specified in an approved CFP 5-Year Action Plan as identified in § 905.300, or approved by HUD for emergency and natural disaster assistance, other than presidentially declared natural disasters and emergencies.

(b) *Eligible activities.* Eligible activities include the development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including compliance with the accessible design and construction requirements contained in 24 CFR 8.32, 24 CFR part 40, 24 CFR part 100, 28 CFR 35.151, and 28 CFR part 36, as applicable) and the development of mixed-finance projects, including the following:

(1) *Modernization.* Modernization is defined in § 905.108 of this part;

(2) *Development.* Development refers to activities and related costs to add units to a PHA's public housing inventory under § 905.600 of this part, including: construction and acquisition with or without rehabilitation; any and all undertakings necessary for planning, design, financing, land acquisition, demolition, construction, or equipment, including development of public housing units, and buildings, facilities, and/or related appurtenances (i.e., nondwelling facilities/spaces). Development of mixed-finance projects include the provision of public housing through a regulatory and operating agreement, master contract, individual lease, condominium or cooperative agreement, or equity interest.

(3) *Financing.* Debt and financing costs (e.g., origination fees, interest) incurred by PHAs for development or modernization of PHA projects that involves the use of Capital Funds, including, but not limited to:

(i) Mixed finance as described in § 905.604 of this part;

(ii) The Capital Fund Financing Program (CFFP) as described in § 905.500 of this part; and

(iii) Any other use authorized by the Secretary under section 30 of the 1937 Act (42 U.S.C. 1437).

(4) *Vacancy reduction.* Physical improvements to reduce the number of units that are vacant. Not included are costs for routine vacant unit turnaround, such as painting, cleaning, and minor repairs. Vacancy reduction activities must be remedies to a defined vacancy problem detailed in a vacancy reduction program included in the PHA's CFP 5-Year Action Plan.

(5) *Nonroutine maintenance.* Work items that ordinarily would be performed on a regular basis in the course of maintenance of property, but have become substantial in scope because they have been postponed and involve expenditures that would otherwise materially distort the level trend of maintenance expenses. These activities also include the replacement of obsolete utility systems and dwelling equipment.

(6) *Planned code compliance.* Building code compliance includes

design and physical improvement costs associated with:

(i) Correcting violations of local building code or the Uniform Physical Condition Standards (UPCS) under the Public Housing Assessment System (PHAS), and

(ii) A national building code, such as those developed by the International Code Council or the National Fire Protection Association; and the IECC or ASHRAE 90.1–2010 (both incorporated by reference, see, § 905.110 of this part), for multifamily high-rises (four stories or higher), or a successor energy code or standard that has been adopted by HUD for new construction pursuant to section 109 of the Cranston-Gonzales National Affordable Housing Act, Public Law 101–625, codified at 42 U.S.C. 12709, or other relevant authority.

(7) *Management improvements.* Noncapital activities that are project-specific or PHA-wide improvements needed to upgrade or improve the operation or maintenance of the PHA's projects, to promote energy conservation, to sustain physical improvements at those projects, or correct management deficiencies. PHAs must be able to demonstrate the linkage between the management improvement and the correction of an identified management deficiency, including sustaining the physical improvements. HUD encourages PHAs, to the greatest extent feasible, to hire residents as trainees, apprentices, or employees to carry out activities under this part, and to contract with resident owned businesses as required by section 3 of the Housing and Community Development Act of 1968, 12 U.S.C. 1701u. Management improvement costs shall be fundable only for the implementation period of the physical improvements, unless a longer period, up to a maximum of 4 years, is clearly necessary to achieve performance targets. Eligible activities include the following costs:

(i) Training for PHA personnel in operations and procedures, including resident selection, rent collection and eviction;

(ii) Improvements to management, financial, and accounting control systems of the PHA;

(iii) Improvement of resident and project security;

(iv) Activities that assure or foster equal opportunity; and

(v) Activities needed in conjunction with capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents, including the costs for resident job training and resident business development activities to enable residents and their businesses to carry out Capital Fund-assisted activities.

(vi) Resident management costs not covered by the Operating Fund include:

(A) The cost of technical assistance to a resident council or RMC to assess feasibility of carrying out management functions for a specific development or developments;

(B) The cost to train residents in skills directly related to the operation and management of the development(s) for potential employment by the RMC;

(C) The cost to train RMC board members in community organization, board development, and leadership;

(D) The cost of the formation of an RMC; and

(E) Resident participation costs that promote more effective resident participation in the operation of the PHA in its Capital Fund activities, including costs for staff support, outreach, training, meeting and office space, childcare, transportation, and access to computers that are modest and reasonable.

(8) *Economic self-sufficiency.* Capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents.

(9) *Demolition and reconfiguration.* (i) The costs to demolish dwelling units or nondwelling facilities subject to prior approval by HUD, where required, and other related costs for activities such as relocation, clearing, and grading the site after demolition, and subsequent site improvements to benefit the remaining portion of the existing public housing property, as applicable.

(ii) The costs to develop dwelling units or nondwelling facilities approved by HUD, where required, and other related costs for activities such as relocation, clearing and grading the site prior to development.

(iii) The costs to reconfigure existing dwelling units to units with different bedroom sizes or to a nondwelling use.

(10) *Resident relocation and mobility counseling.* Relocation and other assistance (e.g., reimbursement to affected residents of reasonable out-of-pocket expenses incurred in connection with temporary relocation, including the cost of moving to and from temporary housing and any increase in monthly rent/utility costs) as may be required or permitted by applicable Public Housing Requirements for permanent or temporary relocation, as a direct result of modernization, development, rehabilitation, demolition, disposition, reconfiguration, acquisition, or an emergency or disaster.

(11) *Security and safety.* Capital expenditures designed to improve the security and safety of residents.

(12) *Homeownership.* Activities associated with public housing homeownership, as approved by HUD, such as:

(i) The cost of a study to assess the feasibility of converting rental units to homeownership units and the preparation of an application for the conversion to homeownership or for the sale of units;

(ii) Construction or acquisition of units;

(iii) Downpayment assistance;

(iv) Closing cost assistance;

(v) Subordinate mortgage loans;

(vi) Construction or permanent financing such as write downs for new construction, or acquisition with or without rehabilitation; and

(vii) Other activities in support of the primary homeownership activities above, including but not limited to:

(A) Demolition to make way for new construction;

(B) Abatement of environmentally hazardous materials;

(C) Relocation assistance and mobility counseling;

(D) Homeownership counseling;

(E) Site improvements; and

(F) Administrative and marketing costs.

(13) *Capital Fund-related legal costs* (e.g., legal costs related to preparing property descriptions for the DOT, zoning, permitting, environmental review, procurement, and contracting).

(14) *Energy efficiency.* Allowed costs include:

(i) Energy audit or updated energy audits to the extent Operating Funds are not available and the energy audit is included within a modernization program.

(ii) Integrated utility management and capital planning to promote energy conservation and efficiency measures.

(iii) Energy and water conservation measures identified in a PHA's most recently updated energy audit.

(iv) Improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate.

(v) The installation and use of Energy Star appliances whenever energy systems, devices, and appliances are replaced, unless it is not cost-effective to do so, in accordance with Section 152 of the Energy Policy Act of 2005, 42 U.S.C. 15841.

(vi) Utility and energy management system automation, and metering activities, including changing mastermeter systems to individually metered systems if installed as a part of a modernization activity to upgrade utility systems; for example, electric, water, or gas systems of the PHA consistent with the requirements of 24 CFR part 965.

(15) *Administrative costs.* Any administrative costs, including salaries and employee benefit contributions, other than the Capital Fund Program Fee, must be related to a specific public housing development or modernization project and detailed in the CFP 5-Year Action Plan.

(16) *Audit.* Costs of the annual audit attributable to the portion of the audit covering the CFP in accordance with § 905.322(c) of this part.

(17) *Capital Fund Program Fee.* This fee covers costs associated with oversight and management of the CFP attributable to the HUD-accepted COCC as described in 24 CFR part 990 subpart H. These costs include duties related to capital planning, preparing the CFP Annual Statement/Performance and Evaluation Report, preparing the CFP 5-Year Action Plan, the monitoring of LOCCS, preparing reports, drawing funds, budgeting, accounting, and procuring construction and other miscellaneous contracts. This fee is not intended to cover costs associated with construction supervisory and inspection functions that are considered a front-line cost of the project.

(18) *Emergency activities.* Capital Fund related activities identified as emergency work, as defined in § 905.108 of this part, whether or not the need is indicated in the CFP 5-Year Action Plan.

§ 905.202 Ineligible activities and costs.

The following are ineligible activities and costs for the CFP:

(a) Costs not associated with a public housing project or development, as defined in § 905.604(b)(1);

(b) Activities and costs not included in the PHA's CFP 5-Year Action Plan, with the exception that expenditures for emergencies and disasters, as defined in § 905.204 of this subpart, that are not identified in the 5-year Action Plan because of their emergent nature are eligible costs;

(c) Improvements or purchases that are not modest in design and cost because they include amenities, materials, and design in excess of what is customary for the locality. Air conditioning is an eligible modest amenity;

(d) Any costs not authorized as outlined in 2 CFR part 225 (codifying OMB Circular A–87), including, but not limited to, indirect administrative costs and indemnification;

(e) Public housing operating assistance, except as provided in § 905.314(l) of this part;

(f) Direct provision of social services through either force account or contract labor. Examples of ineligible direct social services include, but are not limited to, salaries for social workers or GED teachers;

(g) Eligible costs that are in excess of the amount directly attributable to the public housing units when the physical or management improvements, including salaries and employee benefits and contributions, will benefit programs other than public housing, such as section 8 Housing Choice Voucher or local revitalization programs;

(h) Ineligible management improvements include:

(1) Costs for security guards or ongoing security services (Capital Funds may only be used for the initial capital (e.g., fencing, lights, and cameras) or noncapital (e.g., training of in-house security staff) management improvements but may not be used for the ongoing costs, such as security guards after the end of the implementation period of the physical improvements);

(2) General remedial education; and

(3) Job counseling, job development and placement, supportive services during training, and the hiring of a resident coordinator. No continued Capital Funds will be provided after the end of the implementation period of the management improvements. The PHA shall be responsible for finding other funding sources, reducing its ongoing management costs, or terminating the management activities;

(i) Eligible cost that is funded by another source and would result in duplicate funding; and

(j) Any other activities and costs that HUD may determine on a case-by-case basis.

§ 905.204 Emergencies and natural disasters.

(a) *General.* PHAs are required by the CF ACC to carry various types of insurance to protect it from loss. In most cases, insurance coverage will be the primary source of funding to pay repair or replacement costs associated with emergencies and natural disasters. Where the Department's Annual Appropriations Act establishes a set-aside from the Capital Fund appropriation for emergencies and natural disasters, the procedures in this section apply.

(b) *Emergencies and natural disasters.* An emergency is an unforeseen or unpreventable event or occurrence that poses an immediate threat to the health and safety of the residents that must be corrected within one year of funding. A natural disaster for purposes of the Capital Fund reserve, is a non-presidentially declared disaster. In the event an emergency or natural disaster arises, HUD may require a PHA to use any other source that may legally be available, including unobligated Capital Funds, prior to providing emergency or natural disaster funds from the set-aside. The Department will review, on a case-by-case basis, requests for emergency and natural disaster funding from PHAs.

(c) *Procedure to request emergency or natural disaster funds.* To obtain emergency or natural disaster funds, a PHA shall submit a written request in the form and manner prescribed by HUD. In a natural disaster where the PHA requires immediate relief to preserve the property and safety of the residents, the PHA may submit a preliminary request outlined in paragraph (d) of this section. Subsequently, the PHA is required to complete and submit the remaining information outlined in paragraph (e) of this section, at a time prescribed by HUD. For emergency requests, PHAs are to follow the procedures outlined in paragraph (e) of this section.

(d) *Procedure to request preliminary natural disaster grant for immediate preservation.* A PHA may request a preliminary grant only for costs necessary for immediate preservation of the property and safety of the residents. The application should include the reasonable identification of damage and preservation costs as determined by the PHA. An independent assessment will be required when the PHA submits the final request or when the PHA reconciles the preliminary application grant with the actual amounts received from the Federal Emergency Management Agency (FEMA), insurance carriers, and other natural disaster relief sources. Regardless of whether further funding from the set-aside is requested, at a time specified by HUD, the PHA will be expected to provide a reconciliation of all funds received, to ensure that the PHA does not receive duplicate funding.

(e) *Procedure for an emergency or a final request for natural disaster funds.* In the request the PHA shall:

(1) Identify the public housing project(s) with the emergency or natural disaster condition(s).

(2) Identify and provide the date of the conditions that present an unforeseen or unpreventable threat to the health, life, or safety of residents, in the case of emergency; or Natural disaster (e.g., hurricane, tornado, etc.).

(3) Describe the activities that will be undertaken to correct the emergency or the conditions caused by the natural disaster and the estimated cost.

(4) Provide an independent assessment of the extent of and the cost to correct the condition. The assessment must be specific as to the damage and costs associated with the emergency or natural disaster. An independent estimate of damage and repair cost is required as a part of the final natural disaster application. For natural disasters, the assessment must identify damage specifically caused by the natural disaster. The set-aside can be used only to pay costs to repair or replace a public housing project damaged as a result of the natural disaster, not for nonroutine maintenance or other improvements.

(5) Provide a copy of a currently effective DOT covering the property and an opinion of counsel that there are no preexisting liens or other encumbrances on the property.

(6) Demonstrate that without the requested funds from the set-aside, the PHA does not have adequate funds available to correct the emergency condition(s).

(7) Identify all other sources of available funds (e.g., insurance proceeds, FEMA).

(8) Any other material required by HUD.

(f) *HUD Action.* HUD shall review all requests for emergency or natural disaster funds. If HUD determines that a PHA's request meets the requirements of this section, HUD shall approve the request subject to the availability of funds in the set-aside, in the order in which requests are received and are determined approvable.

(g) *Submission of the CF ACC.* Upon being provided with a CF ACC Amendment from HUD, the PHA must sign and date the CF ACC Amendment and return it to HUD by the date established by HUD. HUD will execute the signed and dated CF ACC Amendment submitted by the PHA.

Subpart C—General Program Requirements

§ 905.300 Capital fund submission requirements.

(a) *General.* Unless otherwise stated, the requirements in this section apply to both qualified PHAs (as described in § 903.3(c) of this chapter) and nonqualified PHAs. Each PHA must complete a comprehensive physical needs assessment (PNA).

(1) *Applicability.* Small PHAs (PHAs that own or operate fewer than 250 public housing units) must comply with the requirements of this section beginning 30 days after the end of the federal fiscal year quarter following HUD's publication of a notice in the **Federal Register**.

(2) [Reserved].

(b) *Capital Fund program submission requirements.* At the time that the PHA submits the ACC Amendment(s) for its Capital Fund Grants(s) to HUD, the PHA must also submit the following items:

(1) *CFP 5-Year Action Plan.* (i) *Content.* The CFP 5-Year Action Plan must describe the capital improvements necessary to ensure long-term physical and social viability of the PHA's public housing developments, including the capital improvements to be undertaken within the 5-year period, their estimated costs, status of environmental review, and any other information required for participation in the CFP, as prescribed by HUD. In order to be entitled to fungibility, PHA's must have an approved 5-year Action Plan. Except in the case of emergency/disaster work, the PHA shall not spend Capital Funds on any work that is not included in an approved CFP 5-Year Action Plan and its amendments.

(ii) *Budget.* The Capital Fund Budget for each of the 5 years shall be prepared by a PHA using the form(s) prescribed by HUD. Work items listed in the budget must include, but are not limited to, the following:

(A) Where a PHA has an approved Capital Fund Financing Program (CFFP) loan, debt service payments for the grants from which the payments are scheduled;

(B) Where a PHA has an approved CFFP loan, the PHA shall also include all work and costs, including debt service payments, in the CFP 5-Year Action Plan. Work associated with the use of financing proceeds will be reported separately in a form and manner prescribed by HUD; or

(C) Work affecting health and safety and compliance with regulatory requirements such as section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and the lead-based paint poisoning prevention standards at 24 CFR part 35, before major systems (e.g., heating, roof, etc.) and other costs of lower priority.

(iii) PHA Criteria for Significant Amendment or Modification. The PHA must include in the basic criteria that the PHA will use for determining a significant amendment or modification to the CFP 5-Year Action Plan. In addition to the criteria established by the PHA, for the purpose of the CFP, a proposed demolition, disposition, homeownership, Capital Fund financing, development, or mixed-finance proposal are considered significant amendments to the CFP 5-Year Action Plan.

(iv) *Submission.* The PHA must submit a Board-approved CFP 5-Year Action Plan at least once every 5 years. The PHA may choose to update its CFP 5-Year Action Plan every year. The PHA shall indicate whether its CFP 5-Year Action Plan is fixed or rolling. Prior to submission to HUD, the 5-Year Action Plan must have been approved by the PHA's Board of Commissioners. In any given year that a PHA does not have a CFP 5-Year Action Plan that is approved by the PHA Board of Commissioners and HUD, the Capital Fund grant(s) for these PHAs will be reserved and obligated; however, the PHA will not have access to those funds until its CFP 5-Year Action Plan is approved by the PHA Board of Commissioners and HUD.

(v) Significant amendments or modification to the CFP 5 Year Action Plan. PHAs making significant amendments or modifications to the CFP 5-Year Action Plan, as defined in paragraph (b)(1)(iii) of this section, must follow the requirements of this section.

(A) A PHA after submitting its 5-Year Action Plan may amend or modify the plan. If the amendment or modification is a significant amendment or modification, as defined in paragraph (b)(1)(iii) of this section, the PHA:

(*1*) May not adopt the amendment or modification until the PHA has duly called a meeting of its Board of Commissioners (or similar governing body) and the meeting at which the amendment or modification is adopted, is open to the public; and

(*2*) May not implement the amendment or modification until notification of the amendment or modifications are provided to HUD and approved by HUD in accordance with HUD's plan review procedures, as provided in paragraph (b)(6) of this section.

(B) Each significant amendment or modification to a plan submitted to HUD is subject to the requirement of paragraph (b)(3) of this section.

(2) *Certifications required for receipt of Capital Fund grants.* The PHA is also required to submit various certifications to HUD, in a form prescribed by HUD, including, but not limited to:

(i) Certification of PIC Data;

(ii) Standard Form—Disclosure of Lobbying Activities;

(iii) Civil Rights Compliance, in a form prescribed by HUD; and

(iv) Certification of Compliance with Public Hearing Requirements.

(3) *Conduct of public hearing and Resident Advisory Board Consultation.* A PHA must annually conduct a public hearing and consult with the Resident Advisory Board (RAB) of the PHA to discuss the Capital Fund submission. The PHA may elect to conduct a separate annual public hearing in order to solicit public comments or to hold the annual public hearing at the same time as the hearing for the Annual PHA Plan, the 5-Year Plan, or the required annual hearing for qualified public housing authorities. The hearing must be conducted at a location that is convenient to the residents served by the PHA.

(i) Not later than 45 days before the public hearing is to take place, the PHA must:

(A) Make the Capital Fund submission along with the material required under this paragraph (b) available to the residents and the RAB; and

(B) Publish a notice informing the public that the information is available for review and inspection; that a public hearing will take place on the plan; and of the date, time, and location of the hearing.

(C) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the review of the Capital Fund submission.

(4) *Public and RAB comments.* The PHA must consider the comments from the residents, the public, and the RAB on the Capital Fund submission, or any significant modification thereto. In submitting the final CFP 5-Year Action Plan to HUD for approval, or any significant amendment or modification to the 5-Year Action Plan to HUD for approval, the PHA must include a copy of the recommendations made by the RAB(s) and a description of the manner in which the PHA addressed these recommendations.

(5) *Consistency with Consolidated Plan.* The Capital Fund submission must be consistent with any applicable Consolidated Plan.

(6) *HUD review and approval.* The CFP submission requirements must meet the requirements of this part as well as the Public Housing Program Requirements as defined in § 905.108 of this part. A PHA is required to revise or correct information that is not in compliance, and HUD has the authority to impose administrative sanctions until the appropriate revisions are made. HUD will review the CFP submission requirements to determine whether:

(i) All of the information that is required to be submitted is included;

(ii) The information is consistent with the needs identified in the PNA and data available to HUD; and

(iii) There are any issues of compliance with applicable laws, regulations, or contract requirements that have not been addressed with the proposed use of the Capital Fund.

(7) *Time frame for submission of CFP requirements.* The requirements identified in this paragraph (b) must be submitted to HUD, in a format prescribed by HUD, at the time that the PHA submits its signed CF ACC Amendment.

(8) *Performance and Evaluation Report.* (i) All PHAs must prepare a CFP Annual Statement/Performance and Evaluation Report at a time and in a format prescribed by HUD. These reports shall be retained on file for all grants for which a final Actual Modernization Cost Certificate (AMCC) or an Actual Development Cost Certificate (ADCC) has not been submitted. A final Performance and Evaluation Report must be submitted in accordance with 24 CFR 905.322, at the time the PHA submits its AMCC or ADCC.

(ii) PHAs that are designated as troubled performers under PHAS (24 CFR part 902) or as troubled under the Section 8 Management Assessment Program (SEMAP) (24 CFR part 985), and/or were identified as noncompliant with section 9(j) obligation and expenditure requirements during the fiscal year, shall submit their CFP Annual Statement/Performance and Evaluation Reports to HUD for review and approval.

(iii) All other PHAs, that are not designated as troubled performers under PHAS and are not designated as troubled under SEMAP, and that were in compliance with section 9(j) obligation and expenditure requirements during the fiscal year, shall prepare a CFP Annual Statement/Performance and Evaluation report for all open grants and shall retain the report(s) on file at the PHA, to be available to HUD upon request.

(9) *Moving to Work (MTW) PHAs.* MTW PHAs are to submit the Capital Fund submissions as part of the MTW Plan annually, as required by the MTW Agreement.

(c) [Reserved]

(d) [Reserved]

§ 905.302 Timely submission of the CF ACC amendment by the PHA.

Upon being provided with a CF ACC Amendment from HUD, the PHA must sign and date the CF ACC Amendment and return it to HUD by the date established. HUD will execute the signed and dated CF ACC Amendment submitted by the PHA. If HUD does not receive the signed and dated Amendment by the submission deadline, the PHA will receive the Capital Fund grant for that year; however, it will have less than 24 months to obligate 90 percent of the Capital Fund grant and less than 48 months to expend these funds because the PHA's obligation start date and disbursement end date for these grants will remain as previously established by HUD.

§ 905.304 CF ACC term and covenant to operate.

(a) *Period of obligation to operate as public housing.* The PHA shall operate all public housing projects in accordance with the CF ACC, as amended, and applicable HUD regulations, for the statutorily prescribed period. These periods shall be evidenced by a recorded DOT on all public housing property. If the PHA uses Capital Funds to develop public housing or to modernize existing public housing, the CF ACC term and the covenant to operate those projects are as follows:

(1) *Development activities.* Each public housing project developed using Capital Funds shall establish a restricted use covenant, either in the DOT or as a Declaration of Restrictive Covenants, to operate under the terms and conditions applicable to public housing for a 40-year period that begins on the date on which the project becomes available for occupancy, as determined by HUD.

(2) *Modernization activities.* For PHAs that receive Capital Fund assistance, the execution of each new CF ACC Amendment establishes an additional 20-year period that begins on the latest date on which modernization is completed, except that the additional 20-year period does not apply to a project that receives Capital Fund assistance only for management improvements.

(3) *Operating Fund.* Any public housing project developed that receives Operating Fund assistance shall have a covenant to operate under requirements applicable to public housing for a 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided, except for such shorter period as permitted by HUD by an exception.

(b) *Mortgage or security interests.* The PHA shall not allow *any mortgage* or security interest in public housing assets, including under section 30 of the 1937 Act (42 U.S.C. 1437z–2), without prior written approval from HUD. PHAs that undertake financing unsecured by public housing assets shall include the following nonrecourse language in all financing documents as follows:

''This financing is non-recourse to any public housing property (real or personal property including all public housing assets or income), or disposition proceeds approved pursuant to Section 18 of the United States Housing Act of 1937 (unless explicitly permitted by HUD in the Section 18 approval letter).''

(c) *Applicability of latest expiration date.* All public housing subject to this part or required by law shall be maintained and operated as public housing, as prescribed, until the latest expiration date provided in section 9(d)(3) of the 1937 Act (42 U.S.C. 1437g(d)(3)) or any other provision of law or regulation mandating the operation of the housing as public housing, or under terms and conditions applicable to public housing, for a specified period of time.

§ 905.306 Obligation and expenditure of Capital Fund grants.

(a) *Obligation.* A PHA shall obligate each Capital Fund grant, including formula grants, Replacement Housing Factor (RHF) grants, Demolition and Disposition Transitional Funding (DDTF) grants, and natural disaster grants, no later than 24 months after, and emergency grants no later than 12 months after, the date on which the funds become available to the PHA for obligation, except as provided in paragraphs (c) and (d) of this section. However, a PHA with unobligated funds from a grant shall disregard this requirement for up to not more than 10 percent of the originally allocated funds from that grant. The funds become available to the PHA when HUD executes the CF ACC Amendment. With HUD approval, and subject to the availability of appropriations, the PHA can accumulate RHF grants for up to 5 years or until it has adequate funds to undertake replacement housing. The PHA shall obligate 90 percent of the RHF grant within 24 months from the date that the PHA accumulates adequate funds, except as provided in paragraph (c) of this section.

(b) *Items and costs.* For funds to be considered obligated, all items and costs must meet the definition of ''obligation'' in § 905.108 of this part.

(c) *Extension to obligation requirement.* The PHA may request an extension of the obligation deadline, and HUD may grant an extension for a period of up to 12 months, based on:

(1) The size of the PHA;

(2) The complexity of the CFP of the PHA;

(3) 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

(4) Any other factors that HUD determines to be relevant.

(d) *HUD extension for other reasons.* HUD may extend the obligation deadline for a PHA for such a period as HUD determines to be necessary, if HUD determines that the failure of the PHA to obligate assistance in a timely manner is attributable to:

(1) Litigation;

(2) Delay in obtaining approvals from the Federal Government or a state or local government that is not the fault of the PHA;

(3) Compliance with environmental assessment and abatement requirements;

(4) Relocating residents;

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

(6) Any other reason established by HUD by notice in the **Federal Register**.

(e) *Failure to obligate.* (1) For any month during the fiscal year, HUD shall withhold all new Capital Fund grants from any PHA that has unobligated funds in violation of paragraph (a) of this section. The penalty will be imposed once the violations of paragraph (a) are known. The PHA may cure the noncompliance by:

(i) Requesting in writing that HUD recapture the unobligated balance of the grant; or

(ii) Continuing to obligate funds for the grant in noncompliance until the noncompliance is cured.

(2) After the PHA has cured the noncompliance, HUD will release the withheld Capital Fund grant(s) minus a penalty of one-twelfth of the grant for each month of noncompliance.

(f) *Expenditure.* The PHA shall expend all grant funds within 48 months after the date on which funds become available, as described in paragraph (a) of this section. The deadline to expend funds may be extended only by the period of time of a HUD-approved extension of the obligation deadline. No other extensions of the expenditure deadline will be granted. All funds not expended will be recaptured.

§ 905.308 Federal requirements applicable to all Capital Fund activities.

(a) The PHA shall comply with the requirements of 24 CFR part 5 (General HUD Program Requirements; Waivers), 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), and this part.

(b) The PHA shall also comply with the following program requirements.

(1) *Nondiscrimination and equal opportunity.* The PHA shall comply with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, the Department's generally applicable nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a) and the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*), and its implementing regulations at 24 CFR parts 40 and 41. The PHA shall affirmatively further fair housing in its use of funds under this part, which includes, but is not limited to, addressing modernization and development in the completion of requirements at 24 CFR 903.7(o).

(2) *Environmental requirements.* All activities under this part are subject to an environmental review by a responsible entity under HUD's environmental regulations at 24 CFR part 58 and must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*) and the related laws and authorities listed at 24 CFR 58.5. HUD may make a finding in accordance with 24 CFR 58.11 and may perform the environmental review itself under the provisions of 24 CFR part 50. In those cases where HUD performs the environmental review under 24 CFR part 50, it will do so before approving a proposed project, and will comply with the requirements of NEPA and the related requirements at 24 CFR 50.4.

(3) *Wage rates.* (i) Davis-Bacon wage rates. For all work or contracts exceeding $2,000 in connection with development activities or modernization activities (except for nonroutine maintenance work, as defined in § 905.200(b)(5) of this part), all laborers and mechanics employed on the construction, alteration, or repair shall be paid not less than the wages prevailing in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3142).

(ii) HUD-determined wage rates. For all operations work and contracts, including routine and nonroutine maintenance work (as defined in § 905.200(b)(5) of this part), all laborers and mechanics employed shall be paid not less than the wages prevailing in the locality, as determined or adopted by HUD pursuant to section 12(a) of the 1937 Act, 42 U.S.C. 1437j(a).

(iii) *State wage rates.* Preemption of state prevailing wage rates as provided at 24 CFR 965.101.

(iv) *Volunteers.* The prevailing wage requirements of this section do not apply to volunteers performing development, modernization, or nonroutine maintenance work under the conditions set out in 24 CFR part 70.

(4) *Technical wage rates.* All architects, technical engineers, draftsmen, and technicians (other than volunteers under the conditions set out in 24 CFR part 70) employed in a development or modernization project shall be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by HUD.

(5) *Lead-based paint poisoning prevention.* The PHA shall comply with the Lead-Based Paint Poisoning Prevention Act (LPPPA) (42 U.S.C. 4821 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 *et seq.*), and the Lead Safe Housing Rule and the Lead Disclosure Rule at 24 CFR part 35.

(6) *Fire safety.* A PHA shall comply with the requirements of section 31 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2227).

(7) *Flood insurance and floodplain requirements.* The PHA will not engage in the acquisition, construction, or improvement of a public housing project located in an area that has been identified by the FEMA as having special flood hazards, unless:

(i) The requirements of 24 CFR part 55, Floodplain Management, have been met, including a determination by a responsible entity under 24 CFR part 58 or by HUD under 24 CFR part 50 that there is no practicable alternative to locating in an area of special flood hazards and the minimization of unavoidable adverse impacts;

(ii) Flood insurance on the building is obtained in compliance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*); and

(iii) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59 through 79, or less than one year has passed since FEMA notification regarding flood hazards.

(8) *Coastal barriers.* In accordance with the Coastal Barriers Resources Act (16 U.S.C. 3501 *et seq.*), no financial assistance under this part may be made available within the Coastal Barrier Resources System.

(9) *Displacement, relocation, and real property acquisition.* All acquisition or rehabilitation activities carried out under the Capital Fund, including acquisition of any property for development, shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and with implementing regulations at 49 CFR part 24. Demolition or disposition under section 18 of the 1937 Act, 42 U.S.C. 1437p, is covered by the relocation provisions at 24 CFR 970.21.

(10) *Procurement and contract requirement.* PHAs and their contractors shall comply with section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing rules at 24 CFR part 135.

§ 905.310 Disbursements from HUD.

(a) The PHA shall initiate a fund requisition from HUD only when funds are due and payable, unless HUD approves another payment schedule as authorized by 24 CFR 85.21.

(b) The PHA shall maintain detailed disbursement records to document eligible expenditures (e.g., contracts or other applicable documents), in a form and manner prescribed by HUD.

§ 905.312 Design and construction.

The PHA shall meet the following design and construction standards, as applicable, for all development and modernization.

(a) Physical structures shall be designed, constructed, and equipped to be consistent with the neighborhoods they occupy; meet contemporary standards of modest design, comfort, and livability (see also § 905.202(c) of this part); promote security; promote energy conservation; and be attractive so as to harmonize with the community.

(b) All development projects shall be designed and constructed in compliance with:

(1) A national building code, such as those developed by the International Code Council or the National Fire Protection Association; and the IECC or ASHRAE 90.1–2010 (both incorporated by reference, see § 905.110 of this part), for multifamily high-rises (four stories or higher), or a successor energy code or standard that has been adopted by HUD pursuant to 42 U.S.C. 12709 or other relevant authority;

(2) Applicable state and local laws, codes, ordinances, and regulations;

(3) Other federal requirements, including fire protection and safety standards implemented under section 31 of the Fire Administration Authorization Act of 1992, 15 U.S.C. 2227 and HUD minimum property standards (e.g., 24 CFR part 200, subpart S);

(4) Accessibility Requirements as required by section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) and implementing regulations at 28 CFR part 35; and, if applicable, the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and

(5) Occupancy of high-rise elevator structures by families with children. Pursuant to 42 U.S.C. 1437d(a), a high-rise elevator structure shall not be provided for families with children regardless of density, unless the PHA demonstrates and HUD determines that there is no practical alternative.

(c) All modernization projects shall be designed and constructed in compliance with:

(1) The modernization standards as prescribed by HUD;

(2) Accessibility requirements as required by section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) and implementing regulations at 28 CFR part 35; and, if applicable, the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and

(3) Cost-effective energy conservation measures, identified in the PHA's most recently updated energy audit.

(d) Pursuant to the Energy Policy Act of 2005, in purchasing appliances, PHAs shall purchase appliances that are Energy Star products or Federal Energy Management Program designed products, unless the PHA determines that the purchase of these appliances is not cost effective.

§ 905.314 Cost and other limitations.

(a) *Eligible administrative costs.* Where the physical or management improvement costs will benefit programs other than Public Housing, such as the Housing Choice Voucher program or local revitalization programs, eligible administrative costs are limited to the amount directly attributable to the public housing program.

(b) *Maximum project cost.* The maximum project cost represents the total amount of public housing capital assistance used in connection with the development of a public housing project, and includes:

(1) Project costs that are subject to the TDC limit (i.e., HCC and Community Renewal Costs); and

(2) Project costs that are not subject to the TDC limit (i.e., Additional Project Costs). The total project cost to be funded with public housing capital assistance, as set forth in the proposal and as approved by HUD, becomes the maximum project cost stated in the ACC Amendment. Upon completion of the project, the actual project cost is determined based upon the amount of public housing capital assistance expended for the project, and this becomes the maximum project cost for purposes of the ACC Amendment.

(c) *TDC limit.* (1) Public housing funds, including Capital Funds, may not be used to pay for HCC and Community Renewal Costs in excess of the TDC limit, as determined under paragraph (b)(2) of this section. However, HOPE VI grantees will be eligible to request a TDC exception for public housing and HOPE VI funds awarded in FFY 1996 and prior years. PHAs may also request a TDC exception for integrated utility management, capital planning, and other capital and management activities that promote energy conservation and efficiency. HUD will examine the request for TDC exceptions to ensure that they would be cost-effective, so as to ensure that up-front expenditures subject to the exceptions would be justified by future cost savings.

(2) *Determination of TDC limit.* HUD will determine the TDC limit for a public housing project as follows:

(i) *Step 1: Unit construction cost guideline.* HUD will first determine the applicable ''construction cost guideline'' by averaging the current construction costs as listed in two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of ''average'' quality and the Marshall & Swift cost index for construction of ''good'' quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the **Federal Register**.

(ii) *Step 2: Bedroom size and structure types.* The construction cost guideline is then multiplied by the number of units for each bedroom size and structure type.

(iii) *Step 3: Elevator and nonelevator type structures.* HUD will then multiply the resulting amounts from step 2 by 1.6 for elevator type structures and by 1.75 for nonelevator type structures.

(iv) *Step 4: TDC limit.* The TDC limit for a project is calculated by adding the resulting amounts from step 3 for all the public housing units in the project.

(3) *Costs not subject to the TDC limit.* Additional project costs are not subject to the TDC limit.

(4) *Funds not subject to the TDC limit.* A PHA may use funding sources not subject to the TDC limit (e.g., Community Development Block Grant (CDBG) funds, low-income housing tax credits, private donations, private financing, etc.) to cover project costs that exceed the TDC limit or the HCC limit described in this paragraph (c). Such funds, however, may not be used for items that would result in substantially increased operating, maintenance, or replacement costs, and must meet the requirements of section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (42 U.S.C. 3545). These funds must be included in the project development cost budget.

(d) *Housing Construction Costs (HCC).* (1) *General.* A PHA may not use Capital Funds to pay for HCC in excess of the amount determined under paragraph (d)(2) of this section.

(2) *Determination of HCC limit.* HUD will determine the HCC limit as listed in at least two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of ''average'' quality and the Marshal & Swift cost index for construction of ''good'' quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the **Federal Register**. The resulting construction cost guideline is then multiplied by the number of public housing units in the project, based upon bedroom size and structure type. The HCC limit for a project is calculated by adding the resulting amounts for all public housing units in the project.

(3) The HCC limit is not applicable to the acquisition of existing housing, whether or not such housing will be rehabilitated. The TDC limit is applicable to such acquisition.

(e) *Community Renewal Costs.* Capital Funds may be used to pay for Community Renewal Costs in an amount equivalent to the difference between the HCC paid for with public housing capital assistance and the TDC limit.

(f) *Rehabilitation of existing public housing projects.* The HCC limit is not applicable to the rehabilitation of existing public housing projects. The TDC limit for modernization of existing public housing is 90 percent of the TDC limit as determined under paragraph (c) of this section. This limitation does not apply to the rehabilitation of any property acquired pursuant to § 905.600 of this part.

(g) *Modernization cost limits.* If the modernization costs are more than 90 percent of the TDC, then the project shall not be modernized. Capital Funds shall not be expended to modernize an existing public housing development that fails to meet the HUD definition of reasonable cost found in § 905.108 of this part, except for:

(1) Emergency work;

(2) Essential maintenance necessary to keep a public housing project habitable until the demolition or disposition application is approved; or

(3) The costs of maintaining the safety and security of a site that is undergoing demolition.

(h) *Administrative cost limits and Capital Fund Program Fee.* (1) Administrative cost limits (for non-asset-management PHAs). The PHA shall not budget or expend more than 10 percent of its annual Capital Fund grant on administrative costs, in accordance with the CFP 5-Year Action Plan.

(2) Capital Fund Program Fee (for asset-management PHAs). For a PHA that is under asset management, the Capital Fund Program Fee and administrative cost limits are the same. For the Capital Fund Program Fee, a PHA may charge a management fee of up to 10 percent of the annual CFP formula grant(s) amount, excluding emergency and disaster grants and also excluding any costs related to lead-based paint or asbestos testing, in-house architectural and engineering work, or other special administrative costs required by state or local law.

(i) Modernization. The PHA shall not budget or expend more than 10 percent of its annual Capital Fund grant on administrative costs, in accordance with its CFP 5-Year Action Plan. The 10 percent limit excludes any costs related to lead-based paint or asbestos testing, in-house Architectural and Engineering work, or other special administrative costs required by state or local law.

(ii) Development. For development work with Capital Fund and RHF grants, the administrative cost limit is 3 percent of the total project budget, or, with HUD's approval, up to 6 percent of the total project budget.

(i) *Management improvement cost limits.* In Fiscal Year (FY) 2014, a PHA shall not use more than 18 percent of its annual Capital Fund grant for eligible management improvement costs identified in its CFP 5-Year Action Plan. In FY 2015, a PHA shall not use more than 16 percent of its annual Capital Fund grant for eligible management improvement costs identified in its CFP 5-Year Action Plan. In FY 2016, a PHA shall not use more than 14 percent of its annual Capital Fund grant for eligible management improvement costs identified in its CFP 5-Year Action Plan. In FY 2017, a PHA shall not use more than 12 percent of its annual Capital Fund grant for eligible management improvement costs identified in its CFP 5-Year Action Plan. In FY 2018 and thereafter, a PHA shall not use more than 10 percent of its annual Capital Fund grant for eligible management improvement costs identified in its CFP 5-Year Action Plan. Management improvements are an eligible expense for PHAs participating in asset management.

(j) *Types of labor.* A PHA may use force account labor for development and modernization activities if included in a CFP 5-Year Action Plan that is approved by the PHA Board of Commissioners and HUD. HUD approval to use force account labor is not required when the PHA is designated as a high performer under PHAS.

(k) *RMC activities.* When the entire development, financing, or modernization activity, including the planning and architectural design, is administered by an RMC, the PHA shall not retain any portion of the Capital Funds for any administrative or other reason, unless the PHA and the RMC provide otherwise by contract.

(l) *Capital Funds for operating costs.* A PHA may use Capital Funds for operating costs only if it is included in the CFP 5-Year Action Plan that is approved by the PHA Board of Commissioners and HUD, and limited as described in paragraphs (l)(1) and (2) of this section. Capital Funds identified in the CFP 5-Year Action Plan to be transferred to operations are obligated once the funds have been budgeted and drawn down by the PHA. Once such transfer of funds occurs, the PHA must follow the requirements of 24 CFR part 990 with respect to those funds.

(1) *Large PHAs.* A PHA with 250 or more units may use no more than 20 percent of its annual Capital Fund grant for activities that are eligible under the Operating Fund at 24 CFR part 990.

(2) *Small PHAs.* A PHA with less than 250 units, that is not designated as troubled under PHAS, may use up to 100 percent of its annual Capital Fund grant for activities that are eligible under the Operating Fund at 24 CFR part 990, except that the PHA must have determined that there are no debt service payments, significant Capital Fund needs, or emergency needs that must be met prior to transferring 100 percent of its funds to operating expenses.

§ 905.316 Procurement and contract requirements.

(a) *General.* PHAs shall comply with 24 CFR 85.36, and HUD implementing instructions, for all capital activities including modernization and development, except as provided in paragraph (c) in this section.

(b) *Contracts.* The PHA shall use all contract forms prescribed by HUD. If a form is not prescribed, the PHA may use any Office of Management and Budget (OMB) approved form that contains all applicable federal requirements and contract clauses.

(c) *Mixed-finance development projects.* Mixed-finance development partners may be selected in accordance with 24 CFR 905.604(h). Contracts and other agreements with mixed-finance development partners must specify that they comply with the requirements of §§ 905.602 and 905.604 of this part.

(d) *Assurances of completion.* Notwithstanding 24 CFR 85.36(h), for each construction contract over $100,000, the contractor shall furnish the PHA with the following:

(1) A bid guarantee from each bidder, equivalent to 5 percent of the bid price; and

(2) One of the following:

(i) A performance bond and payment bond for 100 percent of the contract price;

(ii) A performance bond and a payment bond, each for 50 percent or more of the contract price;

(iii) A 20 percent cash escrow;

(iv) A 10 percent irrevocable letter of credit with terms acceptable to HUD, or

(v) Any other payment method acceptable to HUD.

(e) *Procurement of recovered materials.* PHAs that are state agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such PHAs with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered material practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that promotes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 905.318 Title and deed.

The PHA, or, in the case of mixed-finance, the Owner Entity, shall obtain title insurance that guarantees the title is good and marketable before taking title to any and all sites and properties acquired with public housing funds. Immediately upon taking title to a property, the PHA or Owner Entity shall record the deed and a Declaration of Trust or, in the case of mixed finance, a Declaration of Restrictive Covenants, in the form and in the manner and order prescribed by HUD. The PHA shall at all times maintain a recorded Declaration of Trust or Declaration of Restrictive Covenants in the form and in the manner and order prescribed by HUD on all public housing projects covering the term required by this part.

§ 905.320 Contract administration and acceptance of work.

(a) *Contract administration.* The PHA is responsible, in accordance with 24 CFR 85.36, for all contractual and administrative issues arising out of their procurements. The PHA shall maintain full and complete records on the history of each procurement transaction.

(b) *Inspection and acceptance.* The PHA, or, in the case of mixed finance, the Owner Entity shall carry out inspections of work in progress and goods delivered, as necessary, to ensure compliance with existing contracts. If, upon inspection, the PHA determines that the work and/or goods are complete, satisfactory and, as applicable, otherwise undamaged, except for any work that is appropriate for delayed completion, the PHA shall accept the work. The PHA shall determine any holdback for items of delayed completion and the amount due and payable for the work that has been accepted, including any conditions precedent to payment that are stated in the construction contract or contract of sale. The contractor shall be paid for items only after the PHA inspects and accepts that work.

(c) *Guarantees and warranties.* The PHA or, in the case of mixed finance, the Owner Entity, shall specify the guaranty period and amounts to be withheld, as applicable, and shall provide that all contractor, manufacturer, and supplier warranties required by the construction and modernization documents shall be assigned to the PHA. The PHA shall inspect each dwelling unit and the overall project approximately 3 months after the beginning of the project guaranty period, 3 months before its expiration, and at other times as may be necessary to exercise its rights before expiration of any warranties. The PHA shall require repair or replacement of all defective items prior to the expiration of the guaranty or warranty periods.

(d) *Notification of completion.* The PHA, or in the case of mixed finance, the Owner Entity, shall require that all contractors and developers notify the PHA in writing when the contract work, including any approved off-site work, will be completed and ready for inspection.

§ 905.322 Fiscal closeout.

(a) *General.* Each Capital Fund grant and/or development project is subject to fiscal closeout. Fiscal closeout includes the submission of a cost certificate; an audit, if applicable; a final Performance and Evaluation Report; and HUD approval of the cost certificate.

(b) *Submission of cost certificate.* (1) When an approved development or modernization activity is completed or when HUD terminates the activity, the PHA must submit to HUD the:

(i) Actual Development Cost Certificate (ADCC) within 12 months. For purposes of the CF ACC, costs incurred between the completion of the development and the date of full availability (DOFA) becomes the actual development cost; and

(ii) Actual Modernization Cost Certificate (AMCC) for each grant, no later than 12 months after the expenditure deadline but no earlier than the obligation end date. A PHA with under 250 units with an approved CFP 5-Year Action Plan for use of 100 percent of the Capital Fund grant in operations may submit the cost certificate any time after the funds have been budgeted to operations and withdrawn, as described in § 905.314(l) of this part.

(2) If the PHA does not submit the cost certificate and the final CFP Annual Statement/Performance and Evaluation Report within the period prescribed in this section, HUD may impose restrictions on open Capital Fund grants; e.g., establish review thresholds, set the grant to ''auto review'' (HUD automatically reviews it on a periodic basis), or suspend grants, until the cost certificate for the affected grant is submitted. These restrictions may be imposed by HUD after notification of the PHA.

(c) *Audit.* The cost certificate is a financial statement subject to audit pursuant to 24 CFR 85.26. After submission of the cost certificate to HUD, the PHA shall provide the cost certificate to its independent public auditor (IPA) as part of its annual audit. After audit, the PHA will notify HUD of the grants included in the audit, any exceptions noted by the PHA auditor, and the schedule to complete corrective actions recommended by the auditor.

(d) *Review and approval.* For PHAs exempt from the audit requirements, HUD will review and approve the cost certificate based on available information regarding the Capital Fund grant. For PHAs subject to an audit, HUD will review the information from the annual audit provided by the PHA and approve the certificate after all exceptions, if any, have been resolved.

(e) *Recapture.* All Capital Funds in excess of the actual cost incurred for the grant are subject to recapture. Any funds awarded to the PHA that are returned or any funds taken back from the PHA in a fiscal year after the grant was awarded are subject to recapture.

§ 905.324 Data reporting requirements.

The PHA shall provide, at minimum, the following data reports, at a time and in a form prescribed by HUD:

(a) The Performance and Evaluation Report as described in § 905.300(b)(8) of this part;

(b) Updates on the PHA's building and unit data as required by HUD;

(c) Reports of obligation and expenditure; and

(d) Any other information required for participation in the Capital Fund Program.

§ 905.326 Records.

(a) The PHA will maintain full and complete records of the history of each Capital Fund grant, including, but not limited to, CFP 5-Year Action Plans, procurement, contracts, obligations, and expenditures.

(b) The PHA shall retain for 5 years after HUD approves either the actual development or modernization cost certificate all documents related to the activities for which the Capital Fund grant was received, unless a longer period is required by applicable law.

(c) HUD and its duly authorized representatives shall have full and free access to all PHA offices, facilities, books, documents, and records, including the right to audit and make copies.

Subpart D—Capital Fund Formula

§ 905.400 Capital Fund formula (CF formula).

(a) *General.* This section describes the formula for allocating Capital Funds to PHAs.

(b) *Formula allocation based on relative needs.* HUD shall allocate Capital Funds to the PHAs in accordance with the CF formula. The CF formula measures the existing modernization needs and accrual needs of PHAs.

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

(d) *PHAs with 250 or more units in FFY 1999, except the New York City and Chicago Housing Authorities.* The estimates of the existing modernization needs for these PHAs shall be based on the following:

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

(i) The average number of bedrooms in the units in a project (Equation coefficient 4604.7);

(ii) The total number of units in a project (Equation coefficient: 10.17);

(iii) The proportion of units in a project in buildings completed in 1978 or earlier. In the case of acquired projects, HUD will use the DOFA unless the PHA provides HUD with the actual date of construction completion. When the PHA provides the actual date of construction completion, HUD will use that date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation coefficient: 4965.4);

(iv) The cost index of rehabilitating property in the area (Equation coefficient: −10608);

(v) The extent to which the units of a project were in a nonmetropolitan area as defined by the United States Bureau of the Census (Census Bureau) during FFY 1996 (Equation coefficient: 2703.9);

(vi) The PHA is located in the Southern census region, as defined by the Census Bureau (Equation coefficient: −269.4);

(vii) The PHA is located in the Western census region, as defined by the Census Bureau (Equation coefficient: −1709.5);

(viii) The PHA is located in the Midwest census region as defined by the Census Bureau (Equation coefficient: 246.2); and

(2) An equation constant of 13851.

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

(ii) *Acquired projects.* Projects acquired by a PHA with a DOFA date of October 1, 1991, or after, shall be considered to have a zero existing modernization need.

(3) *For New York City and Chicago Housing Authorities, based on a large sample of direct inspections.* Prior to the cost calibration in paragraph (d)(5) of this section, the number used for the existing modernization need of family projects shall be $16,680 in New York City and $24,286 in Chicago, and the number for elderly projects shall be $14,622 in New York City and $16,912 in Chicago.

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

(ii) *Acquired projects.* Projects acquired by a PHA with a DOFA date of October 1, 1991, or after, shall be considered to have a zero existing modernization need.

(4) *PHAs with fewer than 250 units in FFY 1999.* The estimates of the existing modernization need shall be based on the following:

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

(A) The average number of bedrooms in the units in a project. (Equation coefficient: 1427.1);

(B) The total number of units in a project. (Equation coefficient: 24.3);

(C) The proportion of units in a project in buildings completed in 1978 or earlier. In the case of acquired projects, HUD shall use the DOFA date unless the PHA provides HUD with the actual date of construction completion, in which case HUD shall use the actual date of construction completion (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation coefficient: −1389.7);

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

(E) The extent to which the units of a project were in a nonmetropolitan area as defined by the Census Bureau during FFY 1996. (Equation coefficient: 6157.7);

(F) The PHA is located in the Southern census region, as defined by the Census Bureau. (Equation coefficient: 4379.2);

(G) The PHA is located in the Western census region, as defined by the Census Bureau. (Equation coefficient: 3747.7);

(H) The PHA is located in the Midwest census region as defined by the Census Bureau. (Equation coefficient: −2073.5); and

(ii) An equation constant of 24762.

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

(B) *Acquired projects.* Projects acquired by a PHA with a DOFA date of October 1, 1991, or after, shall be considered by HUD to have a zero existing modernization need.

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

(6) *Freezing of the determination of existing modernization need.* FFY 2008 is the last fiscal year that HUD will calculate the existing modernization need. The existing modernization need will be frozen for all developments at the calculation as of FFY 2008 and will be adjusted for changes in the inventory and paragraph (d)(4) of this section.

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

(1) PHAs with 250 or more units, except the New York City and Chicago Housing Authorities. The estimates of the accrual need shall be based on the following:

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

(A) The average number of bedrooms in the units in a project. (Equation coefficient: 324.0);

(B) The extent to which the buildings in a project average fewer than 5 units. (Equation coefficient: 93.3);

(C) The age of a project, as determined by the DOFA date. In the case of acquired projects, HUD shall use the DOFA date unless the PHA provides HUD with the actual date of construction completion, in which case HUD shall 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 coefficient: −7.8);

(D) Whether the development is a family project. (Equation coefficient: 184.5);

(E) The cost index of rehabilitating property in the area. (Equation coefficient: −252.8);

(F) The extent to which the units of a project were in a nonmetropolitan area as defined by the Census Bureau during FFY 1996. (Equation coefficient: −121.3);

(G) PHA size of 6,600 or more units in FFY 1999. (Equation coefficient: −150.7);

(H) The PHA is located in the Southern census region, as defined by the Census Bureau. (Equation coefficient: 28.4);

(I) The PHA is located in the Western census region, as defined by the Census Bureau. (Equation coefficient: −116.9);

(J) The PHA is located in the Midwest census region as defined by the Census Bureau. (Equation coefficient: 60.7); and

(ii) An equation constant of 1371.9.

(2) For the New York City and Chicago Housing Authorities, based on a large sample of direct inspections. 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 City, and $1,251 in Chicago, and the number for elderly developments is $734 in New York City and $864 in Chicago.

(3) PHAs with fewer than 250 units. The estimates of the accrual need shall be based on the following:

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

(A) The average number of bedrooms in the units in a project. (Equation coefficient: 325.5);

(B) The extent to which the buildings in a project average fewer than 5 units. (Equation coefficient: 179.8);

(C) The age of a project, as determined by the DOFA date. In the case of acquired projects, HUD shall use the DOFA date unless the PHA provides HUD with the actual date of construction completion. When provided with the actual date of construction completion, HUD shall use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation coefficient: −9.0);

(D) Whether the project is a family development. (Equation coefficient: 59.3);

(E) The cost index of rehabilitating property in the area. (Equation coefficient: −1570.5);

(F) The extent to which the units of a project were in a nonmetropolitan 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 coefficient: −564.0);

(H) The PHA is located in the Western census region, as defined by the Census Bureau. (Equation coefficient: −29.6);

(I) The PHA is located in the Midwest census region as defined by the Census Bureau. (Equation coefficient: −418.3); and

(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 determined under either paragraph (e)(2) or (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 CF unit, except that each existing unit under the Turnkey III program shall count as one-fourth of a unit. 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 any units that the PHA adds to its inventory when the units are under CF ACC amendment and have reached DOFA by the date that HUD establishes for the FFY in which the CF formula is being run (hereafter called the "reporting date"). New CF units and those reaching DOFA after the reporting date shall be counted for CF formula purposes in the following FFY.

(2) *Replacement units.* Replacement units newly constructed on or after October 1, 1998, that replace units in a project funded in FFY 1999 by the Comprehensive Grant formula system or the Comprehensive Improvement Assistance Program (CIAP) formula system shall be given a new CF ACC number as a separate project and shall be treated as a newly constructed development as outlined in § 905.600 of this part.

(3) *Reconfiguration of units.* Reconfiguration of units may cause the need to be calculated by the new configuration based on the formula characteristics in the building and unit's PIC module (refer to the formula sections here). The unit counts will be determined by the CF units existing after the reconfiguration.

(4) *Reduction of units.* For a project losing units as a result of demolition and disposition, the number of units on which the CF formula is based shall be the number of units reported as eligible for Capital Funds 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 CF formula.* (1) *Total estimated existing modernization need.* The total estimated existing modernization need of a PHA under the CF formula is the result of multiplying for each project 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 project needs.

(2) *Total accrual need.* The total accrual need of a PHA under the CF formula is the result of multiplying for each project 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 CF formula 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 CF formula 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 CF formula 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 percent).

(h) *CF formula capping.* (1) For units that are eligible for funding under the CF formula (including replacement housing units discussed below), a PHA's CF formula share shall be its share of capital need, as determined under the CF formula, subject to the condition that no PHA's CF formula share for units funded under the CF formula can be less than 94 percent of its formula share had the FFY 1999 formula system been applied to these CF formula-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 (MTW) PHA whose MTW agreement provides that its CF formula share is to be calculated in accordance with the previously existing formula, the PHA's CF formula share, during the term of the MTW agreement, may be approximately the formula share that the PHA would have received had the FFY 1999 formula funding system been applied to the CF formula eligible units.

(i) *Replacement Housing Factor to reflect formula need for developments with demolition or disposition occurring on or after October 1, 1998, and prior to September 30, 2013.* (1) *RHF generally.* PHAs that have a reduction in the number of units attributable to demolition or disposition of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the CFF calculation qualify for application of an RHF, subject to satisfaction of criteria stated in paragraph (i)(5) of this section

(2) *When applied.* The RHF will be added, where applicable:

(i) For the first 5 years after the reduction of 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 substantial additional funds, other than public housing funds, for replacement housing, as determined by HUD.

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

(4) *Replacement housing funding in FFYs 1998 and 1999.* Units that received replacement housing funding in FFY 1998 will be treated as if they had received 2 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 the RHF.* A PHA is eligible for this factor only if the PHA satisfies the following criteria:

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

(ii) 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 5-Year Action Plan, as approved by HUD under part 903 of this chapter as well as the PHA's Board of Commissioners;

(iii) The PHA has not received funding for public housing units that will replace the lost units under Public Housing Development, Major Reconstruction of Obsolete Public Housing, HOPE VI, Choice Neighborhoods, Rental Assistance Payment (RAP), or programs that otherwise provide for replacement with public housing units;

(iv) The PHA, if designated as a troubled PHA by HUD, and not already under the direction of HUD or an 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

(v) 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 RHF 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 applicable HUD requirements and regulations.

(ii) If a PHA fails to act as described in paragraph (i)(6)(i) of this section, 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 RHF funds within the 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 RHF 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 RHF within the time frames required by this paragraph, or has not expended such funds within a reasonable time, HUD shall recapture the unobligated amount of the grant.

(j) *Demolition and Disposition Transitional Funding (DDTF) to reflect formula need for developments with demolition or disposition on or after October 1, 2013.* (1) *DDTF generally.* In FFY 2014 and thereafter, PHAs that have a reduction in the number of units occurring in FFY 2013 and attributable to demolition or disposition are automatically eligible to receive Demolition and Disposition Transitional Funding. The DDTF will be included in their annual Capital Fund grant for a 5-year period to offset the reduction in funding a PHA would receive from removing units from inventory. DDTF is subject to the criteria stated in paragraph (j)(4) of this section.

(2) *When applied.* DDTF will be added to a PHA's annual CFP grant, where applicable, for 5 years after the reduction of units described in paragraph (j)(1) of this section.

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

(4) *PHA eligibility for the DDTF.* A PHA is eligible for this factor only if the PHA satisfies the following criteria:

(i) The PHA will automatically receive the DDTF for reduction of units in accordance with paragraph (j)(1) of this section, unless the PHA rejects the DDTF funding for that fiscal year in writing;

(ii) The PHA will use the funding in question for eligible activities under the Capital Fund Program, found at 905.200—such as modernization and development—that are included in the PHA's HUD approved CFP 5-Year Action Plan.

(iii) The PHA has not received funding for public housing units that will replace the lost units from disposition proceeds, or under Public Housing Development, Major Reconstruction of Obsolete Public Housing, HOPE VI, Choice Neighborhoods, RAP, or programs that otherwise provide for replacement with public housing units;

(iv) The PHA, if designated as a troubled PHA by HUD, and not already under the direction of HUD or an appointed receiver, in accordance with part 902 of this chapter, uses an Alternative Management Entity, as defined 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.

■ 6. Add subparts F, G, and H to read as follows:

Subpart F—Development Requirements

Subpart G—Other Security Interests

Subpart H—Compliance, HUD Review, Penalties, and Sanctions

Subpart F—Development Requirements

§ 905.600 General.

(a) *Applicability.* This subpart F applies to the development of public housing units to be included under an ACC and which will receive funding from public housing funds. PHAs must comply, or cause the Owner Entity and its contractors to comply, as applicable, with all of the applicable requirements in this subpart. Pursuant to § 905.106 of this part, when a PHA, a PHA partner, and/or an Owner Entity submits a development proposal and, if applicable, a site acquisition proposal, and executes an ACC covering the public housing units being developed, it is deemed to have certified by those executed submissions its compliance with this subpart. Noncompliance with any provision of this subpart or other applicable statutes or regulations, or the ACC Amendment, and any amendment thereto may subject the PHA, the PHA's partner and/or the Owner Entity to sanctions contained in § 905.804 of this part.

(b) *Description.* A PHA may develop public housing through the construction of new units or the acquisition, with or without rehabilitation, of existing units. A PHA may use any generally accepted method of development including, but not limited to:

(1) *Conventional.* The PHA designs a project on a property it owns. The PHA then competitively selects an entity to build or rehabilitate the project.

(2) *Turnkey.* The PHA advertises for and competitively selects a developer who will develop public housing units on a site owned or to be owned by the developer. Following HUD approval of the development proposal, the PHA and the developer execute a contract of sale and the developer builds the project. Once the project is complete, the developer sells it to the PHA.

(3) *Acquisition with or without rehabilitation.* The PHA acquires an existing property that requires substantial, moderate, or no repair. Any repair work is done by PHA staff or contracted out by the PHA. The PHA must certify that the property was not constructed with the intent of selling it to the PHA or, alternatively, the PHA must certify that HUD requirements were followed in the development of the property.

(4) *PHA use of force account labor.* The PHA uses staff to carry out new construction or rehabilitation, as provided in § 905.314(j) of this part.

(5) *Mixed finance.* Development or modernization of public housing units where the public housing units are owned in whole or in part by an entity other than a PHA, pursuant to Section 905.604.

(c) *Development process.* The general development process for public housing development, using any method and with any financing, is as follows:

(1) The PHA will identify a site to be acquired or a public housing project to be developed or redeveloped. The PHA or its Partner and/or the Owner Entity will prepare a site acquisition proposal pursuant to § 905.608 of this part and/or a development proposal pursuant to § 905.606 of this part for submission to HUD or as otherwise directed by HUD. The PHA may request predevelopment funding necessary for preparation of the acquisition proposal and/or development proposal, as stated in § 905.612(a) of this part.

(2) The PHA must consult with affected residents prior to submission of an acquisition proposal, development proposal, or both to HUD to solicit resident input into development of the public housing project.

(3) After HUD approval of the site acquisition proposal and/or development proposal, HUD and the PHA shall execute the applicable ACC Amendment for the public housing units and record a Declaration of Trust or Declaration of Restrictive Covenants on all property acquired and/or to be developed. The PHA may then commence development of the units.

(4) Upon completion of the public housing project, the PHA will establish the DOFA. After the DOFA, the PHA will submit a cost certificate to HUD attesting to the actual cost of the project that will be subject to audit.

(d) *Funding sources.* A PHA may engage in development activities using any one or a combination of the following sources of funding:

(1) Capital Funds;

(2) HOPE VI funds;

(3) Choice Neighborhoods funds;

(4) Proceeds from the sale of units under a homeownership program in accordance with 24 CFR part 906;

(5) Proceeds resulting from the disposition of PHA-owned land or improvements;

(6) Private financing used in accordance with § 905.604 of this part, Mixed-finance development;

(7) Capital Fund Financing Program (CFFP) proceeds under § 905.500 of this part;

(8) Proceeds resulting from an Operating Fund Financing Program (OFFP) approved by HUD pursuant to 24 CFR part 990; and

(9) Funds available from any other eligible sources.

§ 905.602 Program requirements.

(a) *Local cooperation.* Except as provided under § 905.604(i) of this part for mixed-finance projects, the PHA must enter into a Cooperation Agreement with the applicable local governing body that includes sufficient authority to cover the public housing being developed under this subpart, or provide an opinion of counsel that the existing, amended, or supplementary Cooperation Agreement between the jurisdiction and the PHA includes the project or development.

(b) *New construction limitation.* These requirements apply to the development (including new construction and acquisition) of public housing. All proposed new development projects must meet both of the following requirements:

(1) *Limitation on the number of units.* A PHA may not use Capital Funds to pay for the development cost of public housing units if such development would result in a net increase in the number of public housing units that the PHA owned, assisted, or operated on October 1, 1999. Subject to approval by the Secretary, a PHA may develop public housing units in excess of the limitation if:

(i) The units are available and affordable to eligible low-income families and the CF formula does not provide additional funding for the specific purpose of constructing, modernizing, and operating such excess units; or

(ii) The units are part of a mixed-finance project or otherwise leverage significant additional investment, and the cost of the useful life of the projects is less than the estimated cost of providing tenant-based assistance under section 8(o) of the 1937 Act.

(2) *Limitations on cost.* A PHA may not construct public housing unless the cost of construction is less than the cost of acquisition or acquisition and rehabilitation of existing units, including the amount required to establish, as necessary, an upfront reserve for replacement accounts for major repairs. A PHA shall provide evidence of compliance with this subpart either by:

(i) Demonstrating through a cost comparison that the cost of new construction in the neighborhood where the PHA proposes to construct the housing is less than the cost of acquisition of existing housing, with or without rehabilitation, in the same neighborhood; or

(ii) Documenting that there is insufficient existing housing in the neighborhood to acquire.

(c) *Existing PHA-owned nonpublic housing properties.* Nonpublic housing properties may be used in the development of public housing units provided all requirements of the 1937 Act and the development requirements of this part are met.

(d) *Site and neighborhood standards.* Each proposed site to be newly acquired for a public housing project or for construction or rehabilitation of public housing must be reviewed and approved by the field office as meeting the following standards, as applicable:

(1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed. Adequate utilities (e.g., water, sewer, gas, and electricity) and streets shall be available to service the site.

(2) The site and neighborhood shall be suitable to facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued under these statutes.

(3) The site for new construction shall not be located in an area of minority concentration unless:

(i) There are already sufficient, comparable opportunities outside areas of minority concentration for housing minority families in the income range that is to be served by the proposed project; or

(ii) The project is necessary to meet overriding housing needs that cannot feasibly be met otherwise in that housing market area. ''Overriding housing needs'' shall not serve as the basis for determining that a site is acceptable if the only reason that these needs cannot otherwise feasibly be met is that, due to discrimination because of race, color, religion, creed, sex, disability, familial status, or national origin, sites outside areas of minority concentration are unavailable.

(4) The site for new construction shall not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents in the area.

(5) Notwithstanding the foregoing, after demolition of public housing units a PHA may construct public housing units on the original public housing site or in the same neighborhood if the number of replacement public housing units is significantly fewer than the number of public housing units demolished. One of the following criteria must be satisfied:

(i) The number of public housing units being constructed is not more than 50 percent of the number of public housing units in the original development; or

(ii) In the case of replacing an occupied development, the number of public housing units being constructed is the number needed to house current residents who want to remain at the site, so long as the number of public housing units being constructed is significantly fewer than the number being demolished; or

(iii) The public housing units being constructed constitute no more than 25 units.

(6) The site shall promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(7) The site shall be free from adverse environmental conditions, natural or manmade, such as: Toxic or contaminated soils and substances; mudslide or other unstable soil conditions; flooding; septic tank backups or other sewage hazards; harmful air pollution or excessive smoke or dust; excessive noise or vibrations from vehicular traffic; insect, rodent, or vermin infestation; or fire hazards. The neighborhood shall not be seriously detrimental to family life. It shall not be filled with substandard dwellings nor shall other undesirable elements predominate, unless there is a concerted program in progress to remedy the undesirable conditions.

(8) The site shall be accessible to social, recreational, educational, commercial, and health facilities; health services; and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of similar unassisted standard housing. The availability of public transportation must be considered.

(9) The site shall be accessible to a range of jobs for low-income workers and for other needs. The availability of public transportation must be considered, and travel time and cost via public transportation and private automobile must not be excessive. This requirement may be given less consideration for elderly housing.

(10) The project may not be built on a site that has occupants unless the relocation requirements at § 905.308(b)(9) of this part are met.

(11) The site shall not be in an area that HUD has identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the development is covered by flood insurance required by the Flood Disaster Protection Act of 1973 and meets all applicable HUD standards and local requirements.

(e) *Relocation.* All acquisition or rehabilitation activities carried out with public housing funds must comply with the provisions of § 905.308(b)(9).

(f) *Environmental requirements.* All activities under this part are subject to an environmental review by a responsible entity under HUD's environmental regulations at 24 CFR Part 58 and must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and the related laws and authorities listed at 24 CFR 58.5. HUD may make a finding in accordance with 24 CFR 58.11 and may perform the environmental review itself under the provisions of 24 CFR Part 50. In those cases where HUD performs the environmental review under 24 CFR Part 50, it will do so before approving a proposed project, and will comply with the requirements of NEPA and the related requirements at 24 CFR 50.4.

§ 905.604 Mixed-finance development.

(a) *General.* Mixed-finance development refers to the development (through new construction or acquisition, with or without rehabilitation) or modernization of public housing, where the public housing units are owned in whole or in part by an entity other than a PHA. If the public housing units being developed are 100 percent owned by the PHA, the project is not a mixed-finance project and will be not be subject to mixed-finance development requirements. However, all other development requirements of part 905 are applicable, and, if the project includes both public housing funds and private funding for development, the project may be subject to other applicable program requirements; e.g., the Capital Fund Financing Program, Operating Fund Financing Program, Public Housing Mortgage Program, etc.

(1) *Ownership.* There are various potential scenarios for the ownership structure of a mixed-finance project, such as: public housing units may be owned entirely by a private entity; a PHA may co-own with a private entity; or a PHA affiliate or instrumentality may own or co-own the units.

(2) *Partnerships.* PHAs may choose to enter into a partnership or other contractual arrangement with a third party entity for the mixed-finance development and/or ownership of public housing units.

(3) *Funding.* Funding for mixed-finance developments may include one or a combination of funding sources, pursuant to § 905.600(d) of this part.

(4) *Modernization.* A mixed-finance project that involves modernization, rather than new construction, shall maintain the DOFA date that existed prior to modernization and shall be subject to the provisions of § 905.304(a)(2) of this part regarding the applicable period of obligation to operate the public housing units.

(b) *Definitions applicable to this subpart.* (1) *Mixed-finance.* The development (through new construction or acquisition, with or without rehabilitation) or modernization of public housing, using public housing, nonpublic housing, or a combination of public housing and nonpublic housing funds, where the public housing units are owned in whole or in part by an entity other than the PHA. A mixed-finance development may include 100 percent public housing (if there is an Owner Entity other than the PHA) or a mixture of public housing and nonpublic housing units.

(2) *Owner Entity.* As defined in § 905.108 of this part.

(3) *PHA instrumentality.* An instrumentality is an entity related to the PHA whose assets, operations, and management are legally and effectively controlled by the PHA, and through which PHA functions or policies are implemented, and which utilizes public housing funds or public housing assets for the purpose of carrying out public housing development functions of the PHA. An instrumentality assumes the role of the PHA, and is the PHA under the Public Housing Requirements, for purposes of implementing public housing development activities and programs, and must abide by the Public Housing Requirements. Instrumentalities must be authorized to act for and to assume such responsibilities. For purposes of development, ownership of public housing units by an instrumentality would be considered mixed-finance development.

(4) *PHA affiliate.* An affiliate is an entity, other than an instrumentality, formed by a PHA and in which a PHA has a financial or ownership interest or participates in its governance. The PHA has some measure of control over the assets, operations, or management of the affiliate, but such control does not rise to the level of control to qualify the entity as an instrumentality. For the purposes of development, ownership of public housing units by an affiliate would be considered mixed-finance development.

(5) *Public housing funds.* As defined in § 905.108 of this part.

(c) *Structure of projects.* Each mixed-finance project must be structured to:

(1) Ensure the continued operation of the public housing units in accordance with all Public Housing Requirements;

(2) Ensure that public housing funds committed to a mixed-finance project are used only to pay for costs associated with the public housing units, including such costs as demolition, site work, infrastructure, and common area improvements.

(3) To ensure that the amount of public housing funds committed to a project is proportionate to the number of public housing units contained in the project. To meet this ''pro rata test,'' the proportion of public housing funds compared to total project funds committed to a project must not exceed the proportion of public housing units compared to total number of units contained in the project. For example, if there are a total of 120 units in the project and 50 are public housing units, the public housing units are 42 percent of the total number of units in the project. Therefore the amount of public housing funds committed to the project cannot exceed 42 percent of the total project budget, unless otherwise approved by the Secretary. However, if public housing funds are to be used to pay for more than the pro rata cost of common area improvements, HUD will evaluate the proposal to ensure that common area improvements will benefit the residents in the development in a mixed-income project; and

(4) Ensure that the project is within the Total Development Cost (TDC) and Housing Construction Cost (HCC) limits pursuant to § 905.314(c) and (d) of this part.

(d) *Process.* Except as provided in this section, development of a mixed-finance project under this subpart is subject to the same requirements as development of public housing by a PHA entirely with public housing funds, as stated in § 905.600 of this part. PHAs must submit an acquisition proposal under § 905.608 and/or a development proposal under § 905.606 or as otherwise specified by HUD.

(e) *Conflicts.* In the event of a conflict between the requirements for a mixed-finance project and other requirements of this subpart, the mixed-finance Public Housing Requirements shall apply, unless HUD determines otherwise.

(f) *HUD approval.* For purposes of this section only, any action or approval that is required by HUD pursuant to the requirements set forth in this section shall be construed to mean HUD Headquarters, unless the field office is authorized in writing by Headquarters to carry out a specific function in this section.

(g) *Comparability.* Public housing units built in a mixed-financed development must be comparable in size, location, external appearance, and distribution to nonpublic housing units within the development.

(h) *Mixed-finance procurement.* The requirements of 24 CFR Part 85 and 24 CFR 905.316 are applicable to this subpart with the following exceptions:

(1) PHAs may select a development partner using competitive proposals procedures for qualifications-based procurement, subject to negotiation of fair and reasonable compensation and compliance with TDC and other applicable cost limitations;

(2) An Owner Entity (which, as a private entity, would normally not be subject to 24 CFR Part 85) shall be required to comply with 24 CFR Part 85 if HUD determines that the PHA or PHA instrumentality, or either of their members or employees, exercises significant decision making functions within the Owner Entity with respect to managing the development of the proposed units. HUD may, on a case-by-case basis, exempt such an Owner Entity from the need to comply with 24 CFR Part 85 if it determines that the Owner Entity has developed an acceptable alternative procurement plan.

(i) *Identity of interest.* If the Owner Entity or partner (or any other entity with an identity of interest with the Owner Entity or partner) of a mixed-finance project wants to serve as the general contractor for the mixed-finance project, it may award itself the construction contract only if:

(1) The identity of interest general contractor's bid is the lowest bid submitted in response to a request for bids; or

(2) The PHA submits a written justification to HUD that includes an independent third-party cost estimate that demonstrates that the identity of interest general contractor's costs are less than or equal to the independent third-party cost estimate; and

(3) HUD approves the identity of interest general contractor in conjunction with HUD's approval of the development proposal for the mixed-finance project.

(j) *Operating Subsidy-Only and Capital Fund-Only Assistance.* (1) *General.* This section refers to the mixed-finance development of public housing units that will be developed without public housing funds but will receive operating subsidy, or will be developed with public housing funds but will not receive operating subsidy.

(2) *Operating Subsidy-Only Development.* Operating Subsidy-Only Development refers to mixed-finance projects where public housing units are developed without the use of public housing funds, but for which HUD agrees to provide operating subsidies under Section 9(e) of the 1937 Act. These types of project are subject to the following provisions:

(i) The newly developed public housing units will be included in the calculation of the Capital Fund formula in § 905.400 of this part.

(ii) An ACC Amendment will be executed to include the new public housing units. The term of the ACC Amendment will be determined based on the assistance as provided in § 905.304, unless reduced by the Secretary.

(iii) There shall be no disposition of the public housing units without the prior written approval of HUD, during, and for 10 years after the end of, the period in which the public housing units receive operating subsidy from the PHA, as required by 42 U.S.C. 1437g(3), as those requirements may be amended from time to time. However, if the PHA is no longer able to provide operating subsidies to the Owner Entity pursuant to Section 9(e) of the 1937 Act, the PHA may (on behalf of the Owner Entity) request that HUD terminate the Declaration of Trust or Declaration of Restrictive Covenants, as applicable. Termination under this section does not require disposition approval from HUD pursuant to Section 18 of the 1937 Act, 42 U.S.C. 1437p. However, the PHA must provide public housing residents with a decent, safe, sanitary, and affordable unit to which they can relocate, which may include a public housing unit in another development or a Housing Choice Voucher, and pay for the tenant's reasonable moving costs. The URA is not applicable in this situation.

(iv) Where the PHA elects in the future to use public housing funds for modernization of these units, the PHA must execute an ACC Amendment with a 20-year use restriction and record a Declaration of Trust or Declaration of Restrictive Covenants, in accordance with § 905.304. There may be no disposition of the public housing units without the prior written approval of HUD during the 20-year period, and the public housing units shall be maintained and operated in accordance with all applicable Public Housing Requirements (including the ACC), as those requirements may be amended from time to time.

(3) *Capital Fund-Only Development.* Capital Fund-Only projects refers to mixed-finance projects where a PHA and its partners may develop public housing units using public housing funds for development of new units, but for which HUD will not be providing operating subsidy under Section 9(e) of the Act, 42 U.S.C. 1437g(e). These types of projects are subject to the following provisions:

(i) The newly developed public housing units will not be included in the calculation of the Operating Fund formula.

(ii) The PHA must sign an ACC Amendment, with a 40-year use restriction, for development of new units and record a Declaration of Trust or Declaration of Restrictive Covenants in accordance with § 905.304 of this part, unless the time period is reduced by the Secretary.

(iii) There shall be no disposition of the public housing units, without the prior written approval of HUD, during a 40-year period, and the public housing units shall be maintained and operated in accordance with all applicable Public Housing Requirements (including the ACC), as required by section 9(d)(3) of the 1937 Act, 42 U.S.C. 1437g(d)(3), as those requirements may be amended from time to time.

(4) *Procedures.* PHAs must follow the development approval process identified in § 905.600.

(k) *Mixed-finance operations: Deviation from HUD requirements pursuant to section 35(h) of the 1937 Act, 42 U.S.C. 1437z–7(h).* (1) *Deviation.* If a PHA enters into a contract with an entity that owns or operates a mixed-finance project, and the terms of the contract obligate the entity to operate and maintain a specified number of units in the project as public housing units, the contract may include terms that allow the Owner Entity to deviate from otherwise applicable Public Housing Requirements regarding rents, income eligibility, and other areas of public housing management with respect to all or a portion of the public housing units, subject to the following conditions:

(i) There are a significant number of units in the mixed-finance project that are not public housing units;

(ii) There is a reduction in appropriations under Section 9(e) of the 1937 Act (see 42 U.S.C. 1437g(e)) or a change in applicable law that results in the PHA being unable to fulfill its contractual obligation to the Owner Entity with respect to the public housing units;

(iii) Prior to implementation of the contractual terms related to deviation from the Public Housing Requirements, HUD approves an Alternative Management Plan for the mixed-finance project; and

(iv) The deviation shall be to the extent necessary to preserve the viability of those units while maintaining the low-income character of the units to the maximum extent practicable.

(2) *Preparation of an Alternative Management Plan.* Should the PHA and the Owner Entity determine a need to deviate from the Public Housing Requirements, the PHA, on behalf of the Owner Entity, must submit an Alternative Management Plan to HUD for review and approval prior to implementation of any changes. The Plan must include the following:

(i) A statement describing the Owner Entity's reasons for deviating from the Public Housing Requirements;

(ii) An explanation of the Owner Entity's proposed remedies, including, but not limited to:

(A) How the Owner Entity will select the residents (including the number and income levels of the families proposed to be admitted to the public housing units) and units to be affected by the proposed change;

(B) The Owner Entity's timetable for implementing the Alternative Management Plan;

(C) The impact on existing residents. Note that for any resident who is unable to remain in the unit as a result of implementation of the Alternative Management Plan, the resident must be relocated to a public housing unit or given a Housing Choice Voucher by the PHA or by another entity as provided for in the contractual agreement between the PHA and the Owner Entity;

(iii) An amendment to the existing contractual agreement between the PHA and the Owner Entity that includes provisions which ensure that:

(A) An update on the Alternative Management Plan is submitted annually to HUD to ensure that implementation of the provisions of the Alternative Management Plan continue to be appropriate;

(B) The Owner Entity complies with the requirements of this subpart in its management and operation of the public housing units in accordance with the Alternative Management Plan;

(C) The Owner Entity provides the PHA any income that is generated by the public housing units in excess of the Owner Entity's expenses on behalf of those units, as a result of implementation of provisions in the Alternative Management Plan;

(D) The Owner Entity reinstates all Public Housing Requirements (including rent and income eligibility requirements) with respect to the original number of public housing units and number of bedrooms in the mixed-finance development, following the PHA's reinstatement of operating subsidies at the level originally agreed to in its contract with the Owner Entity; and

(iv) Additional evidence. The PHA must provide documentation that:

(A) The Owner Entity has provided copies of the Alternative Management Plan to residents of the project and provided the opportunity for review and comment prior to submission to HUD. The Owner Entity must have provided written notice to each of the public housing residents in the mixed-finance development of its intention to implement the Alternative Management Plan. Such notice must comply with all relevant federal, state, and local substantive and procedural requirements and, at a minimum, provide public housing residents 90 days advance notice of any proposal to increase rents or to relocate public housing residents to alternative housing;

(B) The revenues being generated by the public housing units (in combination with the reduced allocation of Operating Subsidy resulting primarily from a reduction in appropriations or changes in applicable law such that the PHA is unable to comply with its contractual obligations to the Owner Entity) are inadequate to cover the reasonable and necessary operating expenses of the public housing units. Documentation should include a financial statement showing actual operating expenses and revenues over the past 5 years and the projected expenses and revenues over the next 10 years;

(C) A demonstration that the PHA cannot meet its contractual obligation, and;

(D) The Owner Entity has attempted to offset with regard to the project, the impact of reduced operating subsidies or changes in applicable law by all available means; including the use of other public and private development resources, the use of cash flow from any nonpublic housing units, and funds from other operating deficient reserves.

(3) *HUD review.* HUD will review the Alternative Management Plan to ensure that the plan meets the requirements of this subpart and that any proposed deviation from the Public Housing Requirements will be implemented only to the extent necessary to preserve the viability of the public housing units. Upon completion of HUD's review, HUD will either approve or disapprove the Alternative Management Plan. Reasons for HUD disapproval may include, but are not limited to, the following:

(i) The justification for deviation from the Public Housing Requirements does not qualify in accordance with section 35(h) of the Act (42 U.S.C. 1437z–7(h)).

(ii) The proposed deviation(s) from the Public Housing Requirements are not limited to preserving the viability of the public housing units.

(iii) The information that HUD requires to be included in the Alternative Management Plan has not been included, is not accurate, or does not support the need for deviation from the Public Housing Requirements.

(iv) HUD has evidence that the proposed Alternative Management Plan is not in compliance with other federal requirements, including civil rights laws.

(4) *HUD reevaluation and reapproval.* The PHA, on behalf of the Owner Entity, must provide to HUD, for HUD approval, an annual update on the implementation of the Alternative Management Plan. The update must provide the status of the project and whether the circumstances originally triggering the need for the conditions contained in the Alternative Management Plan remain valid and appropriate. Any proposed changes in the Alternative Management Plan should also be identified. Once the annual update of the Alternative Management Plan is properly submitted, the existing Alternative Management Plan shall remain in effect until such time as HUD takes additional action to approve or disapprove the annual update.

§ 905.606 Development proposal.

(a) *Development proposal.* Prior to developing public housing, either through new construction or through acquisition, with or without rehabilitation, a PHA must submit a development proposal to HUD in the form prescribed by HUD, which will allow HUD to assess the viability and financial feasibility of the proposed development. A development proposal must be submitted for all types of public housing development, including mixed-finance. Failure to submit and obtain HUD approval of a development proposal may result in the public housing funds used in conjunction with the project being deemed ineligible expenses. In determining the amount of information to be submitted by the PHA, HUD shall consider whether the documentation is required for HUD to carry out mandatory statutory, regulatory, or Executive order reviews; the quality of the PHA's past performance in implementing development projects under this subpart; the PHA's demonstrated administrative capability; and other program requirements. The development proposal shall include some or all of the following documentation, as deemed necessary by HUD.

(1) *Project description.* A description of the proposed project, including:

(i) Proposed development method (e.g., mixed-finance, new construction, acquisition with or without rehabilitation, turnkey, etc.), including the extent to which the PHA will use force account labor and use procured contractors. For new construction projects, the PHA must meet the program requirements contained in § 905.602. For projects involving acquisition of existing properties less than 2 years old, the PHA must include an attestation from the PHA and the owner of the property that the property was not constructed with the intent that it would be sold to the PHA or, if it was constructed with the intent that it be sold to the PHA, that it was constructed in compliance with all applicable requirements (e.g., Davis Bacon wage rates, accessibility, etc.);

(ii) Type of residents to occupy the units (e.g., family, elderly, persons with disabilities, or families that include persons with disabilities);

(iii) Number and type of unit (detached, semidetached, row house, walkup, elevator), with bedroom count, broken out by public housing vs. nonpublic housing, if applicable;

(iv) The type and size of nondwelling space, if applicable; and

(v) Schematic drawings of the proposed buildings, unit plans, and additional information regarding plans and specifications, as needed by HUD to review the project.

(2) *Site information.* An identification and description of the proposed site and neighborhood, a site plan, and a map of the neighborhood.

(3) *Participant description.* Identification of participating parties and a description of the activities to be undertaken by each of the participating parties and the PHA; and the legal and business relationships between the PHA and each of the participating parties, as applicable.

(4) *Development project schedule.* A schedule for the development project that includes each major stage of development, through and including the submission of an Actual Development Cost Certificate to HUD.

(5) *Accessibility.* A PHA must provide sufficient information for HUD to determine that dwelling units and other public housing facilities meet accessibility requirements specified at § 905.312 of this part, including, but not limited to, the number, location, and bedroom size distribution of accessible dwelling units (see 24 CFR 8.32 and 24 CFR part 40).

(6) *Project costs.* (i) *Budgets.* To allow HUD to assess sources of funding and projected uses of funds, the PHA shall submit a project budget, in the form prescribed by HUD, reflecting the total permanent development budget for the project, including all sources and uses of funds, including hard and soft costs. The PHA shall also submit a budget for the construction period and a construction draw schedule showing the timing of construction financing contributions and disbursements. In addition, the PHA shall submit an independent construction cost estimate or actual construction contract that supports the permanent and construction budgets.

(ii) *TDC calculation.* The PHA must submit a calculation of the TDC and HCC, subject to § 905.314 of this part.

(iii) *Financing.* A PHA must submit a detailed description of all financing necessary for the implementation of the project, specifying the sources and uses. In addition, HUD may require documents related to the financing (e.g., loan documents, partnership or operating agreement, regulatory and operating agreement, etc.) to be submitted in final draft form as part of the development proposal. Upon financial closing, HUD may also require final, executed copies of these documents to be submitted to HUD for final approval, per § 905.612(b)(2) of this part.

(A) *Commitment of funds.* Documents submitted pursuant to this section must irrevocably commit funds to the project. Irrevocability of funds means that binding legal documents—such as loan agreements, mortgages, deeds of trust, partnership agreements or operating agreements, or similar documents committing funds—have been executed by the applicable parties; though disbursement of such funds may be subject to meeting progress milestones, the absence of default, and/or other conditions generally consistent with similar non-public housing transactions. For projects involving revolving loan funds, the irrevocability of funds means that funds in an amount identified to HUD as the maximum revolving loan have been committed pursuant to legally binding documents; though disbursement of such funds may be subject to meeting progress milestones, the absence of default, and/or other conditions generally consistent with similar affordable housing transactions. The PHA must confirm the availability of each party's financing, the amount and source of financing committed to the proposal by the parties, and the irrevocability of those funds.

(B) *Irrevocability of funds.* To ensure the irrevocable nature of the committed funds, the PHA shall review the legal documents committing such funds to ensure that the progress milestones and conditions precedent contained in such contracts are generally consistent with similar affordable housing transactions; that the PHA and/or its Owner Entity know of no impediments that would prevent the project from moving forward consistent with the project milestones and conditions precedent; and, after conducting sufficient due diligence, that such documents are properly executed by persons or entities legally authorized to bind the entity committing such funds.

(C) *Third-party documents.* The PHA is not required to ensure the availability of funds by enforcing documents to which it is not a party.

(D) *Opinion of counsel.* As part of the proposal, the PHA may certify as to the irrevocability of funds through the submission of an opinion of the PHA's counsel attesting that counsel has examined the availability of the participating parties' financing, and the amount and source of financing committed to the project by the participating parties, and has determined that such financing has been irrevocably committed, as defined in paragraph (a)(6)(iii)(A) of this section, and that such commitments are consistent with the project budget submitted under paragraph (a)(6)(i) of this section.

(7) *Operating pro-forma/Operating Fund methodology.* To allow HUD to assess the financial feasibility of projects, PHAs shall submit a 10-year operating pro-forma, including all assumptions, to assure that operating expenses do not exceed operating income. For mixed-finance development, the PHA must describe its methodology for providing and distributing operating subsidy to the Owner Entity for the public housing units.

(8) *Local Cooperation Agreement.* A PHA may elect to exempt all public housing units in a mixed-finance project from the payment in lieu of taxes provisions under section 6(d) of the Act, 42 U.S.C. 1437d(d), and from the finding of need and cooperative agreement provisions under sections 5(e)(1)(ii) and (e)(2) of the Act, 42 U.S.C. 1437c(e)(1)(ii) and (e)(2), and instead subject units to local real estate taxes, but only if the PHA provides documentation from an authorized official of the local jurisdiction that development of the units is consistent with the jurisdiction's comprehensive housing affordability strategy. If the PHA does not elect this exemption, the Cooperation Agreement as provided in § 905.602(a) is required and must be submitted.

(9) *Environmental requirements.* The PHA must provide an approved Request for Release of Funds and environmental certification, submitted in accordance with 24 CFR part 58, or approval in accordance with 24 CFR part 50. HUD will not approve a development proposal without the appropriate environmental approval.

(10) *Market analysis.* For a mixed-finance development that includes nonpublic housing units, the PHA must include an analysis of the projected market for the proposed project.

(11) *Program income and fees.* The PHA must provide information identifying fees to be paid to the PHA, the PHA's partner(s), the Owner Entity, and/or other participating parties identified by HUD and on the receipt and use of program income.

(b) *Additional HUD-requested information.* PHAs are required to provide any additional information that HUD may need to assess the development proposal.

§ 905.608 Site acquisition proposal.

(a) *Submission.* When a PHA determines that it is necessary to acquire vacant land for development of public housing through new construction, using public housing funds, prior to submission and approval of a development proposal under § 905.606 of this part, the PHA must submit an acquisition proposal to HUD for review and approval prior to acquisition. The acquisition proposal shall include the following:

(b) *Justification.* A justification for acquiring property prior to development proposal submission and approval.

(c) *Description.* A description of the property (i.e., the proposed site and/or project) to be acquired.

(d) *Project description; site and neighborhood standards.* An identification and description of the proposed project, site plan, and neighborhood, together with information sufficient to enable HUD to determine that the proposed site meets the site and neighborhood standards at § 905.602(d) of this part.

(e) *Zoning.* Documentation that the proposed project is permitted by current zoning ordinances or regulations, or evidence to indicate that needed rezoning is likely and will not delay the project.

(f) *Appraisal.* Documentation attesting that an appraisal of the proposed property by an independent, state certified appraiser has been conducted and that the acquisition is in compliance with § 905.308(b)(9) of this part. The purchase price of the site/property may not exceed the appraised value without HUD approval.

(g) *Schedule.* A schedule of the activities to be carried out by the PHA.

(h) *Environmental assessment.* An environmental review or request for HUD to perform the environmental review pursuant to § 905.308(b)(2) of this part.

§ 905.610 Technical processing.

(a) *Review.* HUD shall review all development proposals and site acquisition proposals for compliance with the statutory, Executive order, and regulatory requirements applicable to the development of public housing and the project. HUD's review will evaluate whether the proposed sources and uses of funds are eligible and reasonable, and whether the financing and other documentation establish to HUD's satisfaction that the development is financially viable and structured so as to adequately protect the federal investment of funds in the development. For this purpose, HUD will consider the PHA's proposed methodology for allocating operating subsidies on behalf of the public housing units, the projected revenue to be generated by any nonpublic housing units in a mixed-finance development, and the 10-year operating pro forma and other information contained in the development proposal.

(b) *Subsidy layering analysis.* After the PHA submits the documentation required under paragraph (a) of this section, HUD or its designee (e.g., the State Housing Finance Agency) shall carry out a subsidy layering analysis, pursuant to section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (see 24 CFR part 4), to determine that the amount of assistance being provided for the development is not more than necessary to make the assisted activity feasible after taking into account the other governmental assistance.

(c) *Safe harbor standards.* For mixed-finance projects, in order to expedite the mixed-finance review process and control costs, HUD may make available safe harbor and maximum fee ranges for a number of costs. If a project is at or below a safe harbor standard, no further review will be required by HUD. If a project is above a safe harbor standard, additional review by HUD will be necessary. In order to approve terms above the safe harbor, the PHA must demonstrate to HUD in writing that the negotiated terms are appropriate for the level of risk involved in the project, the scope of work, any specific circumstances of the development, and the local or national market for the services provided.

(d) *Approval.* If HUD determines that a site acquisition proposal or a development proposal is approvable, HUD shall notify the PHA in writing of its approval. The HUD approval of a development proposal will include the appropriate form of ACC for signature. The PHA must execute the ACC and return it to HUD for execution. Until HUD approves a development proposal, a PHA may only expend public housing funds for predevelopment costs, as provided in § 905.612 of this part.

(e) *Amendments to approved development proposals.* HUD must approve any material change to an approved development proposal. HUD defines material change as:

(1) A change in the number of public housing units;

(2) A change in the number of bedrooms by an increase/decrease of more than 10 percent;

(3) A change in cost or financing by an increase/decrease of more than 10 percent; or

(4) A change in the site.

§ 905.612 Disbursement of Capital Funds—predevelopment costs.

(a) *Predevelopment costs.* After a new development project has been included in the CFP 5-Year Action Plan that has been approved by the PHA Board of Commissioners and HUD, a PHA may use funding for predevelopment expenses. Predevelopment funds may be expended in accordance with the following requirements:

(1) Predevelopment assistance may be used to pay for materials and services related to proposal development and project soft costs. It may also be used to pay for costs related to the demolition of units on a proposed site. Absent HUD approval, predevelopment assistance may not be used to pay for site work, installation of infrastructure, construction, or other hard costs related to a development.

(2) For non-mixed-finance projects, predevelopment funding up to 5 percent of the total amount of the public housing funds committed to a project does not require HUD approval. HUD shall determine on a case-by-case basis that an amount greater than 5 percent may be drawn down by a PHA to pay for necessary and reasonable predevelopment costs, based upon a consideration of the nature and scope of activities proposed to be carried out by the PHA. Before a request for predevelopment assistance in excess of 5 percent may be approved, the PHA must provide to HUD information and documentation specified in §§ 905.606 and 905.608 of this part, as HUD deems appropriate.

(3) For mixed-finance projects, all funding for predevelopment costs must be reviewed and approved by HUD prior to expenditure.

(4) The requirements in paragraph (b) of this section to disburse funds for mixed-financed projects in an approved ratio to other public and private funding do not apply to disbursement of predevelopment funds.

(b) *Standard drawdown requirements.* (1) *General.* If HUD determines that the proposed development is approvable, it may execute with the PHA the applicable ACC Amendment to provide funds for the purposes and in the amounts approved by HUD. Upon approval of the development proposal and all necessary documentation evidencing and implementing the development plan, the PHA may disburse amounts as are necessary and consistent with the approved development proposal without further HUD approval, unless HUD determines that such approval is necessary. Once HUD approves the site acquisition proposal, the PHA may request funds for acquisition activities. Each Capital Fund disbursement from HUD is deemed to be an attestation of compliance by the PHA with the requirements of this part, as prescribed in § 905.106 of this part. If HUD determines that the PHA is in noncompliance with any provision of this part, the PHA may be subject to the sanctions in § 905.800, subpart H, of this part.

(2) *Mixed-finance projects.* For mixed-finance projects, prior to PHA disbursement of public housing funds, except predevelopment funds identified in paragraph (a) of this section, HUD may require a PHA to submit to HUD, for review and approval, copies of final, fully executed, and, where appropriate, recorded documents, submitted as part of the development proposal process. Upon completion of the project, the ratio of public housing funds to non-public housing funds for the overall project must remain as reflected in the executed documents. The ratio does not apply during the construction period.

Subpart G—Other Security Interests

§ 905.700 Other security interests.

(a) The PHA may not pledge, mortgage, enter into a transaction that provides recourse to public housing assets, or otherwise grant a security interest in any public housing project, portion thereof, or other property of the PHA without the written approval of HUD.

(b) The PHA shall submit the request in the form and manner prescribed by HUD.

(c) HUD shall consider:

(1) The ability of the PHA to complete the financing, the improvements, and repay the financing;

(2) The reasonableness of the provisions in the proposal; or

(3) Any other factors HUD deems appropriate.

Subpart H—Compliance, HUD Review, Penalties, and Sanctions

§ 905.800 Compliance.

As provided in § 905.106 of this part, PHAs or other owner/management entities and their partners are required to comply with all applicable provisions of this part. Execution of the CF ACC Amendment received from the PHA, submissions required by this part, and disbursement of Capital Fund grants from HUD are individually and collectively deemed to be the PHA's certification that it is in compliance with the provisions of this part and all other Public Housing Program Requirements. Noncompliance with any provision of this part or other applicable requirements may subject the PHA and/or its partners to sanctions contained in § 905.804 of this part.

§ 905.802 HUD review of PHA performance.

(a) *HUD determination.* HUD shall review the PHA's performance in completing work in accordance with this part. HUD may make such other reviews when and as it determines necessary. When conducting such a review, HUD shall, at minimum, make the following determinations:

(1) HUD shall determine whether the PHA has carried out its activities under this part in a timely manner and in accordance with its CFP 5-Year Action Plan and other applicable requirements.

(2) HUD shall determine whether the PHA has a continuing capacity to carry out its Capital Fund activities in a timely manner.

(3) HUD shall determine whether the PHA has accurately reported its obligation and expenditures in a timely manner.

(4) HUD shall determine whether the PHA has accurately reported required building and unit data for the calculation of the formula.

(5) HUD shall determine whether the PHA has obtained approval for any CFFP or OFFP proposal and any PHA development proposal.

(b) [Reserved]

§ 905.804 Sanctions.

(a) If at any time, HUD finds that a PHA has failed to comply substantially with any provision this part, HUD may impose one or a combination of sanctions, as it determines is necessary. Sanctions associated with failure to obligate or expend in a timely manner are specified at § 905.306 of this part. Other possible sanctions that HUD may impose for noncompliance by the PHA include, but are not limited to, the following:

(1) Issue a corrective action order, at any time, by notifying the PHA of the specific program requirements that the PHA has violated, and specifying that any of the corrective actions listed in this section must be taken. Any corrective action ordered by HUD shall become a condition of the CF ACC Amendment.

(2) Require reimbursement from non-HUD sources.

(3) Limit, withhold, reduce, or terminate Capital Fund or Operating Fund assistance.

(4) Issue a Limited Denial of Participation or Debar responsible PHA officials, pursuant to 2 CFR parts 180 and 2424.

(5) Withhold assistance to the PHA under section 8 of the Act, 42 U.S.C. 1437f.

(6) Declare a breach of the CF ACC with respect to some or all of the PHA's functions.

(7) Take any other available corrective action or sanction as HUD deems necessary.

(b) *Right to appeal.* Before taking any action described in paragraph (a) of this section, HUD shall notify the PHA of its finding and proposed action and provide to the PHA an opportunity, within a prescribed period of time, to present any arguments or additional facts and data concerning the finding and proposed action to HUD's Assistant Secretary for Public and Indian Housing.

PART 941—[REMOVED]

■ 7. Under the authority of 42 U.S.C. 3535(d), remove part 941, consisting of §§ 941.101–941.616.

PART 968—[REMOVED]

■ 8. Under the authority of 42 U.S.C. 3535(d), remove part 968, consisting of §§ 968.101–968.435.

PART 969—[REMOVED]

■ 9. Under the authority of 42 U.S.C. 3535(d), remove part 969, consisting of §§ 969.101–969.107.

Dated: September 18, 2013.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2013–23230 Filed 10–23–13; 8:45 am]

BILLING CODE 4210–67–P

CAPITAL FUND PROCESSING GUIDANCE FOR FY 2020 GRANT AWARDS

This notice provides Public Housing Authorities (PHAs) with guidance on the Capital Fund Program (CFP) Award process for Fiscal Year (FY) 2020.

SUBMISSION OF CFP ACC AMENDMENT AND DUE DATE: The Department will send each PHA an email (based on the addresses in the PIC system) with a link to the Capital Fund website when the CFP Annual Contributions Contract (ACC) Amendments are available on the website. PHAs are responsible for maintaining the correct contact information, including the correct email address, in PIC. PHAs must download the CFP ACC Amendment Excel Spreadsheet, input their PHA Code in the spreadsheet and print the spreadsheet.

In accordance with Public Law 116-94, Division H, Title II, Section 235 (The Further Consolidated Appropriations Act, 2020) (the FY 2020 HUD Appropriations Act), the person with authority to obligate the PHA (e.g. the Executive Director, Chief Executive Officer or another person with delegated authority) must sign the printed CFP ACC Amendment. Three copies of the signed CFP ACC Amendment must be received by the HUD Field Office by the date identified in the year-specific Capital Fund Timeline posted to the web. Any ACC Amendment(s) that are received in the Field Office after the due date will be subject to a delay in processing but will have the same obligation start date. PHAs that do not submit their ACC Amendment(s) by the due date will be given a second deadline to submit the signed ACC Amendment to the Field Office. If the PHA fails to meet the second deadline, the funds will not be available to the PHA, and HUD may de-reserve these funds.

EPIC: In FY 2020, all PHAs are required to submit their CFP 5-Year Action Plans and Budgets within HUD's Energy and Performance Information Center (EPIC) system; the electronic CFP submission process replaced the paper submission process that was retired at the end of 2017. Field Offices (FOs) will review and approve or withhold approval, as appropriate, of 5-Year Action Plans in EPIC. PHAs with an approved 5-Year Action Plan in EPIC may revise work activity amounts to reflect actual awards and may "funge", or reschedule, approved activities from one year to another without seeking additional HUD FO approvals. **NOTE**, any use of funge or reschedule must be within the statutory and regulatory requirements for obligations and expenditures.

HUD continues to use a new Budget Line Item (BLI) structure across EPIC and HUD's eLOCCS system. In EPIC, HUD has consolidated the BLIs that PHAs use most frequently into one broad-scope BLI, ***BLI 1480-General Capital Activity***. HUD expects this change to cut down significantly on the need for budget revisions and to better align with PHA business practices. The BLIs that remain distinct are generally those that are used less frequently or are rarely changed, or those with statutory or regulatory restrictions, such as BLI 1406-Operations, BLI 1408 Management Improvements, and BLI 1410-Administration.

PHAs will continue to be able to update budget amounts in EPIC and then LOCCS will be updated to reflect the changes without Field Offices having to enter these budget revisions into

LOCCS. However, budget revisions must continue to comply with requirements that have been enforced in the past through "hard edit checks" in LOCCS, including restrictions on changes to the debt obligation BLIs and limits on the funds allocated to BLI 1406 Operations, BLI 1410-Administration, and BLI 1408-Management Improvements; budget revisions that fail to comply will not be applied in eLOCCS. The PHA will be notified via email if a budget revision fails to meet the proper edit check and will therefore not be loaded to LOCCS. PHAs should update budgets in EPIC to reflect the actual amount spent for each work category even if the work categories fall under the same BLI.

PRE-SUBMISSION DETAILS

1. **PHA Board Resolution Required on File.** PHAs are required to have on file a copy of a PHA Board Resolution approving the PHA's CFP 5-Year Action Plan (including ones submitted in the EPIC system). If a PHA has not held a board meeting on the CFP 5-Year Action Plan that includes FY 2020 at the time the CFP grants are awarded, it may use the public hearing and PHA Board Resolution from its most recent approved CFP 5-Year Action Plan; however, the PHA is not permitted to use Capital Funds for new work items that were not included in the previous CFP 5-Year Action Plan, until the CFP 5-Year Action Plan that is to be in effect for FY 2020Capital Fund grants is approved by the Board.

   Please note that even though PHAs are permitted to use a PHA Board Resolution from a previous CFP 5-Year Action Plan, all PHAs must submit a CFP 5-Year Action Plan that covers FY 2020.

2. **PHAs Rejecting a Capital Fund Grant.** If a PHA elects to reject any CFP grant(s), the Executive Director Chief Executive Officer, or another person with delegated authority must send a written statement to the local HUD FO which identifies the grant number and dollar amount of the grant(s) to be rejected.

   PHAs are required to have on file a Board Resolution rejecting the CFP grant(s) for the fiscal year.

3. **Management Improvements Cost Limits and Eligible Items.** As indicated in 24 CFR 905.315(i), the FY 2020 limit for Capital Funds budgeted to BLI 1408 Management Improvements will be 10%. Please review the eligible Management Improvements in 24 CFR 905.200(b)(7) to ensure that your PHA's planned activities are eligible for this BLI. In order to fund Management Improvements with Capital Funds, a PHA must be able to demonstrate, upon request by HUD, the linkage between the Management Improvement and the correction of an identified management deficiency, including sustaining the physical improvements.

4. **Updated Data Universal Number System (DUNS) Number.** The DUNS registration in the System for Awards Management (SAM) is a requirement to receive Federal awards, and the registration must be active. If you have an expired DUNS number, your FY 2020 CFP grant will be awarded, but the funds will not be obligated in LOCCS until

the registration is updated. Once the DUNS registration is updated, the PHA should notify OCI via email at PIHOCI@hud.gov. The email should include proof that the DUNS registration has been renewed. OCI will then obligate the grant funds, notify the PHA via email, and the funds will be available for use. Please note that the obligation end date of the FY 2020 grant will remain the same, so PHAs with expired DUNS numbers will have less than 2 years to obligate the funds.

PHA SUBMISSION REQUIREMENTS

5-Year Action Plan entered into EPIC: As noted above, to be authorized to spend FY2020 CFP Grants, PHAs must have a CFP 5-Year Action Plan that includes FY2020 entered into EPIC.

As was the case in 2019, HUD Field Offices will review and approve CFP 5-Year Action Plans in EPIC following their normal review protocol. In addition to the review practices currently in place, FOs will review the appropriateness of estimated grant amounts and work activities pursuant to the guidance provided in PIH Notice 2016-21. Once the Field Office Director has approved a CFP 5-Year Action Plan in EPIC, the PHA may then continue to modify the plan to reflect changing circumstances and decisions. While many modifications, such as adjusting estimated amounts, do not require additional FO approval, other changes, such as the addition of new work activities, will require FO review and approval in EPIC.

See PIH Notice 2016-21 for more information on EPIC. The notice is available at: https://www.hud.gov/sites/documents/PIH-2016-21.PDF

PHAs receiving CFP grants are also required to submit various certifications to HUD; EPIC's Activity Planning Module does not currently automate these certifications, and PHAs must continue to submit these certifications.

Written Statement Defining Significant Amendment/Modification: Each PHA must submit a written statement defining the criteria the PHA will use for determining a significant amendment or modification to the CFP 5- Year Action Plan. In addition to the criteria established by the PHA, a proposed demolition, disposition, homeownership, RAD conversion, Capital Fund Financing, development, or mixed finance proposal is considered by HUD to be significant amendment to the CFP 5-year Action Plan based on the Capital Fund Final Rule. This must be submitted as a separate written statement.

Required Certifications:

☐ Certification of Compliance w/Public Hearing: (PHA must have a copy of one of the following.)

Non-Qualified PHAs - HUD form HUD-50077-ST-HCV-HPincludes this certification

Y / N Was the public hearing conducted in FY 2020

Qualified PHAs - A statement certifying that the PHA conducted a public hearing in compliance with 24 CFR Part 905, signed and dated by the executive director.

Y / N Was the public hearing conducted in FY 2020

☐ HUD form 50071, Certification of Payments to Influence Federal Transactions

☐ Civil Rights Certification: (PHA must have a copy of one of the following.)
Non-Qualified PHAs - HUD form HUD-50077-ST-HCV-HP
Qualified PHAs - HUD form HUD-50077-CR
☐ Lobbying Form – SFLLL (if required in accordance with the form's instructions)

Public Hearing Requirement: PHAs are encouraged to combine the Capital Fund submission hearing with the PHA Plan hearing. If a PHA has not yet submitted its PHA plan for FY 2020 and has not held a public hearing, it may use its most recent public hearing from the PHA plan or CFP 5-Year Action Plan process. However, the PHA must conduct a public hearing to cover the new work activities proposed for the 2020grant(s) (typically incorporated in the PHA Plan Process) before it can use Capital Funds for those work items. The PHA can continue to perform work items in the previous year's approved CFP 5-Year action plan.

Civil Rights Certification and Lobbying Form SFLLL: If the PHA has already submitted a HUD-50077-ST-HCV-HP or HUD-50077-CR and the SFLLL with its PHA Plan for FY 2020, a copy of the document can be submitted.

ADDITIONAL INFORMATION REGARDING THE 2020 CAPITAL FUND GRANTS

Reimbursement of CFP Eligible Activities Funded with other Sources: PHAs are not permitted to use any amount of a CFP grant to reimburse itself for eligible Capital Fund activities that were funded from another source. All Capital Fund obligations, expenditures, and disbursements must be recorded to the grant.

One of the reasons to prohibit paying from a non-CFP account and then reimbursing the CFP (if in fact it was CF eligible work) is that this could involve Anti-Deficiency Act violations. The Anti-Deficiency Act prohibits federal agencies from obligations or expending federal funds in advance or in excess of an appropriation, and from accepting voluntary services. A deficiency with no legal authority to pay with Capital Funds, and reimbursing at a later time, does not cure the Anti-Deficiency violation.

These transactions could also be an illegal augmentation of appropriations. An agency may not augment its appropriation from, or transfer funds to, sources external to the appropriation per se without specific statutory authority. The objective of the rule against augmentation of appropriations is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity.

Additionally, a reimbursing procedure could be the result of a merging of grant accounts (e.g., Operating Fund and Capital Fund) and lead to ineligible uses. The only exception to reimbursement is if the CFP appropriation would allow cost reimbursement/indemnity or revolving fund. No CFP appropriation has ever permitted this.

Notification of Closeout or Future Public Housing Development (HUD-5837): This form is notification to HUD of a PHA's intention to either closeout from the public housing program or develop new public housing units. Such removal may be through any available law or HUD program, which may include Sections 18, 22, 33, 32 of the U.S. Housing Act of 1937 (the 1937 Act) or the Rental Assistance Demonstration (RAD) program).

Physical Needs Assessment: In accordance with Section 222 of the FY2020 HUD Appropriations Act, HUD cannot utilize 2020 HUD Appropriations to require or enforce a PNA requirement. Due to industry best practices and fiscal efficiencies, HUD is still encouraging PHAs to complete a PNA every 5 years as part of their strategic planning process. HUD has made available PNA tools and resources and continues to encourage voluntary submissions of PNAs to the Capital Programs Division. For further information see, https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund/physicalassessment or email hudpna@hud.gov

Flexibility for Capital Fund Amounts: Starting with FY 2015 (including FY 2020) CFP awards, the limitation on Capital Funds used for Operating Fund eligible activities described in section 9(g)(1) of the 1937 Act is increased from 20% to 25%, as identified in paragraph 2 of the 2020 CFP ACC Amendment. Small PHAs (those owning/operating less than 250 units) may continue to use the full flexibility provided for in section 9(g)(2) of the 1937 Act. Please note the following:

- A PHA with 250 or more public housing units may use no more than 25% of its FY 2020 CFP grant for activities that are eligible under the Operating Fund at 24 CFR Part 990.

- A PHA with less than 250 public housing units, that is not designated as troubled under PHAS, may continue to use up to 100% of its annual CFP grant for activities that are eligible under the Operating Fund at 24 CFR Part 990, except that the PHA must have determined that there are no debt service payments, significant Capital Fund needs, or emergency needs that must be met prior to transferring 100% of its Capital Funds to Operating Fund purposes. [24 CFR 905.314(l)]

- A PHA may use Capital Funds for Operating Fund eligible activities only if such use is included in the CFP 5-Year Action Plan that is approved by the PHA Board and HUD. If a PHA's CFP 5-Year Action Plan does not permit the use of Capital Funds for Operating Fund purposes or the Plan limits such transfer to a lesser amount than allowed and desired by the PHA for transfer, a PHA may amend or modify its CFP 5-Year Action Plan after its submission to HUD.

  However, the PHA will need to determine if such amendment or modification to its CFP 5-Year Action Plan is a significant amendment based on the criteria established by the PHA in accordance with 24 CFR 905.300(b)(1)(iii). If such amendment is a significant amendment, the PHA must ensure that it complies with 24 CFR 905.300(b)(1)(v)(A)—i.e., the PHA's Board adopted the amendment at a public meeting and the amendment is approved by HUD. If such modification is not a significant amendment/modification, the PHA may submit the amended CFP 5-Year Action Plan to HUD for approval.

- Capital Funds identified in the CFP 5-Year Action Plan to be transferred to Operations are obligated once the funds have been budgeted and **drawn down** by the PHA.

- Once a PHA transfers Capital Funds to Operations, the PHA must follow the requirements of 24 CFR 990 with respect to those funds.

Waiver for Anticrime and Antidrug Activities for Large PHAs (those owning/operating 250 or more public housing units): As noted above, for FY 2020 the limitation in section 9(g)(1) of the 1937 Act is increased by authority under the FY 2020 HUD Appropriations Act from 20% to 25%, as it was also in FYs 2015,2016, 2017, 2018, and 2019 HUD Appropriations Acts. For FY 2020, the Secretary may waive this limitation to allow PHAs to fund activities authorized under section 9(e)(1)(C) of the 1937Act.

Section 9(e)(1)(C) provides that PHAs may use Operating Funds for <u>anticrime and antidrug activities</u>, including the costs of providing adequate security for public housing residents, including above-baseline police service agreements.

Large PHAs seeking to transfer more than 25% of FY 2020 Capital Funds to Operating Funds for anticrime and antidrug activities ONLY must request a waiver in writing addressed to the Director of the Office of Capital Improvements, 451 7th St. SW, Washington, DC 20410, and the local field office. The Office of Capital Improvements will process these requests and provide a response within 14 days of the date of submission. Waiver requests will be granted at HUD's discretion and for good cause. A good cause determination is made on a case-by-case basis and is dependent upon the adequacy of the documentation provided by the PHA seeking a waiver. Generally, if your local HUD Field Office does not support the waiver request made by the PHA, the request will be denied.

The PHA *must* provide the following information and documentation along with its waiver request:

In thorough and concise narrative form,

- ☐ Identify the amount above 25% of the FY 2020 CFP award both in dollars and by percentage the PHA seeks to transfer to Operating Funds
- ☐ Identify and describe the threat that crime and drug-related activity poses to health and safety of PHA's public housing residents
    - ▪ Describe whether this is a new threat, ongoing, or increased threat
    - ▪ Include the most recent crime data of the PHA's locality (i.e., town, city, parish, or county from a recognized source such as local law enforcement or Uniform Crime Reports that lists types and numbers of offences (may include as an attachment)
- ☐ Identify the applicable development(s)
- ☐ Identify and describe the specific anticrime and antidrug activities the PHA plans to undertake, including the costs of such activities
    - ▪ State whether the relevant activities are new or currently ongoing activities
    - ▪ For currently ongoing activities, state how the activities are currently funded

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  - For new and ongoing activities, state how the PHA intends to maintain such activities, if applicable
  - If applicable, please provide a copy of the police service agreement the PHA intends to fund as an activity by way of this waiver request, demonstrating how the agreement is above baseline;
- ☐ *Optional Attachments*: The PHA may also wish to include supporting narrative or agreements from one or more of the following:
  - Resident Advisory Boards or PHA security personnel;
  - local Community Policing Organizations; OR
  - local officials (e.g. business council executives, or city council executives).

PLEASE NOTE, the anticrime and antidrug activities described by the PHA **must** be Operating Fund eligible activities, for example, costs for security guard salaries or ongoing security services. A waiver request is not necessary for activities which are Capital Fund eligible, for example, installation of lighting, fencing, or cameras or training of in-house security staff. For example, installation of security cameras is Capital Fund eligible, while ongoing maintenance and monitoring of the cameras are Operating Fund eligible expenses. A waiver request to install security cameras would be denied because the PHA does not need to transfer Capital Funds to Operations in order to do so, while HUD would consider/approve a waiver request to pay the salary of security staff to monitor the installed cameras.

HUD will notify the PHA of HUD's decision in writing within 14 days of the submission date of the request. If approved, the PHA must ensure that such use of funds is included in its approved 5-Year Action Plan before the PHA proceeds with an approved transfer of Capital Funds to Operating Funds.

Resident Consultation: The PHA is required to hold a public hearing, consult with the resident advisory board (RAB), and submit any comments received from these hearings and the consultations.

- There must be a 45-day notification given prior to the hearing.
- The Capital Fund Submission must be made available to residents and the Resident Advisory Board prior to the hearing.

PHA Plan Submission: In order to comply with the requirements of 24 CFR 903.7(g), PHAs are required to include a statement of capital improvements needed in the PHA Annual Plan. In the past, a PHA satisfied this requirement by including copies of its CFP Annual Statement/Performance and Evaluation Report (HUD 50075.1) and the CFP 5 year- Action Plan (HUD 50075.2) forms with the Annual PHA Plan. The CFP Annual Submission was decoupled from the PHA Plan submission by 24 CFR part 905 published on October 24, 2013 and effective November 25, 2013. Now that the Capital Fund submission is decoupled from the PHA Plan, PHAs are still required to incorporate some information on the capital improvement needs in the Annual PHA Plan. To satisfy that requirement, HUD is requiring the PHA to reference its latest HUD approved CFP 5 Year Action Plan covering the current Fiscal Year in its PHA Plan, prior to submission of the PHA Annual Plan. PHAs can reference the form by including the following language in Section 8.0 of the PHA Plan Template: "See HUD Form 50075.2 approved by HUD on XX/XX/XXXX."

During the PHA Plan review, HUD field office staff will not be required to review the previously approved CFP 5-Year Action Plan. HUD will consider the requirement to include a statement of capital improvements needed as satisfied by the reference to the previously approved CFP 5-Year Action Plan. For the purpose of the annual hearing, PHAs should provide a copy of the form that they reference in the Annual Plan.

Environmental Review: In accordance with the changes in process announced in Notice 2016-22, all activities at project site(s) assisted or to be assisted by HUD must receive environmental clearance before the PHA takes any choice-limiting actions or obligates any funds. HUD has made a programmatic determination under Part 50 that the operating activities listed in Appendix A of Notice 2016-22 are not subject to further environmental review; for any other activities, PHAs must request and receive clearance from either a Responsible Entity or HUD.

HUD Field Offices are not required to withhold approval of CFP 5-Year Action Plans or place manual holds on CFP grants in LOCCS, pending receipt of environmental clearance documentation. Even though Field Offices are able to approve CFP 5-Year Action Plans without confirming environmental clearance, the Work Activity Description in a PHA's CFP 5-Year Action Plan must provide sufficient specificity to facilitate effective HUD Field Office review of the plan and subsequent environmental review monitoring. Specificity is required so that Field Office staff can determine the level of environmental review required for a given work activity. PHAs are encouraged to enter information in the Description field on the scope of the activity (e.g., number of units impacted). For example, for a work activity covering roof replacement, a sufficient description may read: "Installing new 20-year roof, as well as gutters and soffits, at low-rise building containing 5 Public Housing units." A work description simply stating "Roof" would be insufficient, because it does not indicate whether the activity will cover full-scale replacement of the roof or simply patching portions of the roof, a distinction with implications for the level of environmental review required.

Demolition and Disposition Transitional Funding: Section 905.400(j) establishes Demolition and Disposition Transitional Funding which provides an additional 5 years of funding for units removed from a PHA's inventory due to demolition or disposition on or after October 1, 2012. DDTF replaced RHF funding beginning with FY 2014 grants. DDTF is calculated in the same manner that RHF was calculated; however, it is included in the annual Capital Fund grant and not given as a separate grant.

If the PHA has received funding for units that will replace the lost units through another program, it is not eligible for DDTF. A PHA is eligible for DDTF funding if the PHA did not receive funding for public housing from Choice Neighborhoods, HOPE VI, or other programs that would otherwise provide replacement housing. Public housing units removed from the

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inventory for homeownership, eminent domain, or unit conversion reconfiguration are not eligible for DDTF grants.

Eligible PHAs automatically receive the 5 years of DDTF upon removal from PIC of the units approved for demolition or disposition.

The PHA may use the funding for any eligible activities under the Capital Fund Program (905.200). The funding must be obligated and expended in accordance with the requirements of the Capital Fund formula grant in which the funding has been included.

Obligation End Date (OED) Extensions: The FY 2020 HUD Appropriations Act and the Capital Fund regulations permit the Secretary to delegate to the Deputy Secretary or the Assistant Secretary to grant time extensions of the obligation deadline but only in very limited circumstances. The reasons for granting time extensions stated in Section 9(j)(2)(A) of the 1937Act are the following:

1. litigation;
2. obtaining approvals of the Federal, State, or local government;
3. compliance with environmental assessment or abatement requirements;
4. relocating residents;
5. an event beyond the control of the public housing agency (PHA); and
6. Any other reason established by the Secretary in a notice in the Federal Register. In a notice published January 19, 2017 at 82 Federal Register 6615, and revised through PIH Notice 2019-23 published on September 5, 2019, the Department of Housing and Urban Development (Department) indicated that it will extend the obligation end date for Capital Funds used in a RAD conversion for up to thirty-six months from the previous obligation end date.

In addition, the Secretary may extend the time period under Section 9(j)(2)(C) of the 1937 Act for an additional period not to exceed 12 months, based on the following:

1. The size of the PHA;
2. The complexity of the capital program of the PHA;
3. Any limitations on the ability of the PHA to obligate amounts allocated for the agency from the Capital Fund in a timely manner as a result of State or local law; or
4. Such other factors as the Secretary determine to be relevant.

All requests for extensions of the OED must be submitted to HQ prior to the current OED and must indicate the criteria from Section 9(j)(2)(A) or Section 9(j)(2)(C) of the 1937 Act that it meets to justify the extension. HUD has no ability to grant extensions of OED deadlines after the deadline and does not have the ability to extend the expenditure end date (EED) unless the grant was approved for an OED extension prior to the original OED. EEDs are always two years after the OED. The EED for grants with extended OEDs will be two years after the new OED. Submissions must be sent to, the Director of the Office of Capital Improvements. A copy of the extension request should be sent to PIH_OCI@hud.gov and the subject line should read as follows: Request for the Extension of the Obligation End Date for (PHA code), for Capital Fund grant (Grant #)

Please note that if a PHA reaches its OED prior to receiving the approval letter for an OED extension request, then the request will still be processed as long as it was received by HUD prior to the current OED.

Additional Information. If you have any questions or you need additional information, please contact the Field Office staff in your jurisdiction. For assistance from PIH Headquarters, Office of Capital Improvements, you may email your questions to PIHOCI@HUD.gov.

HUDPIH-516391410-247 (246) Last Updated 14 Feb 2020

Capital Fund Program ACC Amendment

Capital Fund Program (CFP) Amendment
To The Consolidated Annual Contributions Contract (form **HUD-53012**)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB No. 2577-0075
Exp. 10/31/2017

Whereas, (Public Housing Authority) ______________________________ (herein called the "PHA") and the United States of America, Secretary of Housing and Urban Development (herein called "HUD") entered into Consolidated Annual Contributions

Contract(s) (ACC) Number(s) ______________________________ dated ______________

Whereas, HUD has agreed to provide CFP assistance, upon execution of this Amendment, to the PHA in the amount to be specified below for the purpose of assisting the PHA in carrying out capital and management activities at existing public housing developments in order to ensure that such developments continue to be available to serve low-income families:

$______________ for Fiscal Year 20 ____ to be referred to under Capital Fund Grant Number ______________

PHA Tax Identification Number (TIN) ______________

Whereas, HUD and the PHA are entering into this CFP Amendment Number ______________

Now Therefore, the ACC(s) is (are) amended as follows:

1. The ACC(s) is (are) amended to provide CFP assistance in the amount specified above for capital and management activities of PHA developments. This amendment is a part of the ACC(s).

2. The capital and management activities shall be carried out in accordance with all HUD regulations and other requirements applicable to the Capital Fund Program.

3. (Check one)

☐ a. In accordance with the HUD regulations, the Annual PHA Plan has been adopted by the PHA and approved by HUD, and may be amended from time to time. The capital and management activities shall be carried out as described in the Annual PHA Plan Capital Fund Annual Statement.

OR

☐ b. The Annual PHA Plan has not been adopted by the PHA and approved by HUD. THe PHA may use its CFP assistance under this contract for work items contained in its 5-Year Plan, before the Annual PHA Plan is approved.

For cases where HUD has approved a Capital Fund Financing Amendment to the ACC (CFF Amendment attached), HUD will deduct the payment for amortization scheduled payments from the grant immediately on the effective date of this CFP Amendment. The payment of CFP funds due per the amortization scheduled will be made directly to a designated trustee (Trustee Agreement attached) within 3 days of the due date.

Whether 3.a or 3.b is selected above, the 24 month time period in which the PHA must obligate this CFP assistance pursuant to section 9(j)(1) of the United States Housing Act of 1937, as amended, (the "Act") and 48 month time period in which the PHA must expend this CFP assistance pursuant to section 9(j)(5) of the Act starts with the effective date of this CFP amendment (the date on which CFP assistance becomes available to the PHA for obligation).

4. Subject to the provisions of the ACC(s) and paragraph 3, and to assist in the capital and management activities, HUD agrees to disburse to the PHA or the designated trustee from time to time as needed up to the amount of the funding assistance specified herein.

5. The PHA shall continue to operate each development as low-income housing in compliance with the ACC(s), as amended, the Act and all HUD regulations for a period of twenty years after the last disbursement of CFP assistance for modernization activities and for a period of forty years after the last distribution of CFP assistance for development activities. However, the provisions of Section 7 of the ACC shall remain in effect for so long as HUD determines there is any outstanding indebtedness of the PHA to HUD which arose in connection with any development(s) under the ACC(s) and which is not eligible for forgiveness, and provided further that, for a period of ten years following the last payment of assistance from the Operating Fund to the PHA, no disposition of any development covered by this amendment shall occur unless approved by HUD.

6. The PHA will apply for the entire CFP assistance amount for this FY. If the PHA does not comply with any of its obligations under this Amendment and does not have its Annual PHA Plan approved within the period specified by HUD, HUD shall impose such penalties or take such remedial action as provided by law. HUD may direct the PHA to terminate all work described in the Capital Fund Annual Statement of the Annual PHA Plan. In such case, the PHA shall only incur additional costs with HUD approval.

7. Implementation or use of funding assistance provided under this Amendment is subject to attached corrective action order(s).

(mark one): ☐ Yes ☐ No

8. The PHA acknowledges its responsibility for adherence to this Amendment by subgrantees to which it makes funding assistance hereunder available.

The parties have executed this Agreement, and it will be effective on ______________ This is the date on which CFP assistance becomes available to the PHA for obligation.

U. S. Department of Housing and Urban Development By: Date:	**PHA Executive Director** By: Date:
Title:	Title