Capital Fund Guidebook

Office of Public and Indian Housing

TRAINING

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Chapter 1. Background and Introduction

1.1. General Overview.

The Capital Fund Program provides financial assistance in the form of grants to public housing agencies (PHAs) to carry out capital and management activities including those listed in Section 9(d)(1) of the United States Housing Act of 1937 (1937 Act). Capital Fund grants can also be entered into with resident management corporations (RMCs) (see 24 CFR 964.225(h)). The Capital Fund Program (CFP) financial assistance may also be provided to mixed-finance projects that contain public housing units provided Amendments are entered into under the Mixed Finance Annual Contributions Contract (ACC) Amendment and Capital Fund ACC Amendment. Eligible Capital Fund activities are further described in this guidebook. Regulations on Capital Funds are at 24 CFR part 905.

Congress provides Capital Funds through annual appropriations. In order to receive a CFP grant, a PHA must meet three administrative prerequisites which are to:

1. Validate project-level information in HUD's data systems,
2. Have an approved 5-Year Action Plan and
3. Enter into a Capital Fund Annual Contributions Contract Amendment with HUD.

The Annual Contribution Contract (ACC) has broader compliance requirements, but this guidebook concerns only the CF ACC Amendment.

In addition to these administrative requirements, there are also legal requirements. PHAs must be able to provide written certification and counsel's opinion that property receiving CFP assistance is under a current *(i.e., have not expired and will not expire during the use term associated with the use of the CF grant*) and effective (*i.e., no liens or encumbrances prior to the Declaration of Trust (DOT) or Declaration of Restrictive Covenants (DORC)*), and is in compliance with HUD requirements. Every public housing project must be under a DOT or DORC as required. See all DOT and DORC requirements at 24 CFR §§905.100(b), 905.108, 905.204, 905.304, 905.318, 905.505(c), 905.510, 905.600, 905.604. Exhibit 1.1 presents a sample opinion.

CFP was created by an amendment to the 1937 Act by the Quality Housing and Work Responsibility Act (QHWRA) in 1998 (adding Section 9(d) to the 1937 Act 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 also Operating Funds and Section 8.

The recent regulatory consolidation of 24 CFR Part 905 incorporated the remaining applicable sections of Parts 941 and 968 the Code of Federal Regulations (CFR) for HUD along with existing provisions of Part 905 which included the CF formula, eligible CF activities, CF obligation and expenditure requirements and Capital Fund Financing Program.

Guidebook users will recognize that the new regulations introduced many reforms. Structurally, the regulations combine 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

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requirements, incorporate recent energy requirements, and direct more funding towards modernization by way of the new Demolition and Disposition Transitional Funding (DDTF).

All PHAs that have public housing units under an ACC entered into HUD's data systems are eligible to receive CFP grants. HUD approvals required by the CFP must be in writing from an authorized PHA official.

1.2. Types of Capital Funds 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 4. The Capital Fund formula factors modernization backlog (existing modernization needs) and accrual needs in the calculation.
Replacement Housing Factor (RHF)	RHF provides a formula-based add-on to Capital Funds for up to 10 years (in two 5-year increments) after a PHA has removed units from its inventory for HUD-approved demolition or disposition. RHF funds may be used only to develop new public housing units. 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 5 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 8.
Emergency Safety and Security	From the Emergency and Non-Presidentially Declared Natural Disaster Set-Aside, Congress authorizes in HUD Annual Appropriation Acts, annual sets 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.

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1.3. History of the Public Housing Program

The public housing program was established by the 1937 Act. Its purpose was to enable local public housing agencies (PHAs), created pursuant to state law, to provide decent, safe, and sanitary housing for low-income families. Initially, Congress authorized the federal government to issue bonds to finance the development of new public housing. PHAs made those units available to eligible families at "low rents," which is why public housing was previously known as "low-rent housing." At the time of the program's inception, there were no federal subsidies provided for the operation or capital improvements to those housing projects.

In 1968, Congress passed the "Brooke Amendment," which limited the amount of rent PHAs could charge tenants to a certain percentage of a family's adjusted income. To offset the impact of reducing the tenant's portion of a rent payment, Congress authorized federal operating subsidies for PHAs to supplement PHA's housing operation costs. Prior to 1968, the federal government did not provide funding for the operation of or capital improvements to public housing developments.

Subsequently, Congress authorized under section 14 of the 1937 Act and appropriated funding for capital improvements or "modernization" of public housing projects. Initially, this program was known as the Comprehensive Improvement Assistance Program (CIAP). CIAP was a discretionary grant program under which a PHA had to apply to HUD for funding to make categorically specific capital improvements to its public housing projects. Typically, not all PHA applications were funded in a given year.

As a result of the aging and increasing capital improvement needs of existing public housing, and the intermittent Capital Funding for some PHAs, there was a need for a more predictable and significant stream of modernization funding. Congress responded by authorizing and funding the Comprehensive Grant Program (CGP) in the early 1990s. CGP was a formula grant, rather than a competitive grant, which provided funds to PHAs based on the characteristics of each PHA's housing stock. Initially, the CGP was only for PHAs that had 500 or more public housing units, while smaller PHAs remained in CIAP. The CGP was later revised to include PHAs with 250 or more public housing units, with smaller PHAs again remaining in CIAP. Eventually, CIAP was made subject to a formula.

CGP PHAs were required to develop and submit 5-Year Action Plans and Annual Plans to identify and prioritize their modernization needs. PHAs were also required to submit Performance and Evaluation Reports (P&E Reports). The funding, planning, and reporting structure of CGP was governed by 24 CFR Part 968, which HUD continued to use for purposes that were not repealed by QHWRA , and was the basis for the current CFP.

HUD continued to provide funds to PHAs for the development of new public housing through conventional (new construction), turnkey, acquisition, or acquisition with rehabilitation. However, instead of issuing bonds, Congress authorized direct appropriations to PHAs for development grants. Such development grants were authorized by Section 5 of the 1937 Act, which also included a set-aside program for certain large modernization projects known as Major Reconstruction of Obsolete Projects (MROP). In 1994, Congress stopped appropriating separate funding for the development of new public housing units. In 1996, the Part 941 development regulation was amended to add new Subpart F for Mixed-Finance Development.

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As part of the FFY 1999 HUD Appropriations Act, Congress enacted the QHWRA (Title V of Pub.L. 105-276), which included a comprehensive set of amendments to the 1937 Act. With respect to Capital Funding for public housing, in an effort to streamline programs and consistently provide Capital Funding for all PHAs, QHWRA repealed Section 14 and amended section 5 of the 1937 Act and created a new Capital Fund Program under Section 9(d) of the 1937 Act. This signaled the end of separate modernization programs for smaller PHAs (CIAP) and larger PHAs (CGP), as well as the public housing development program, by merging them into a single fund. Like CGP, the Capital Fund Program provides for annual formula grants to all PHAs based upon the characteristics of each PHA's public housing stock. Capital Funds may be used for modernization, development, management improvements, and the other eligible activities described in this Guidebook.

In addition, QHWRA authorized a new planning process for PHAs generally known as the "PHA Plan," which consists of a 5-Year Plan and an Annual Plan. The purpose of the PHA Plan is to provide a unified local planning process for all of a PHA's activities in its upcoming fiscal year, subject to resident involvement, a public hearing, and limited HUD review. The PHA Plan outlines the PHA's mission and goals across all of the PHA's operations and activities. As implemented by HUD, the PHA Plan fully incorporates a capital planning process for all PHAs, similar to that which had been developed under the Part 968 regulations for CGP.

The Housing and Economic Recovery Act of 2008 (HERA) (Pub.L. 110-289) provided regulatory relief to smaller PHAs, also known as Qualified PHAs. A Qualified PHA is exempt from filing a PHA Annual Plan, but must still file the 5-Year Plan, make an annual civil rights certification, consult with its Resident Advisory Board, and hold a public hearing to discuss any changes in the goals, objectives, or policies of the housing agency after 45 days' notice. A Qualified PHA (1) has 550 or fewer public housing units and tenant choice vouchers and (2) is not designated as troubled and does not have a failing score under the Section 8 Management Assessment Program during the prior 12 months. An annual submission is still required of all PHAs, both Qualified and non-Qualified, in order to effectively calculate Capital Funds and monitor the use of grant funds.

Regulations implementing various aspects of QHWRA for the Capital Fund Program have been published separately over the years. Headquarters instructed Field Offices and PHAs to follow 24 CFR Part 905, but to continue to follow most aspects of 24 CFR Part 968 for modernization activities and 24 CFR Part 941 for development activities (except where provisions had been repealed by QHWRA or HERA).

24 CFR Part 905 was published in the Federal Register on October 24, 2013 (Docket No. 5236-F-02) and became effective on November 25, 2013. This comprehensive final rule updated the existing regulations previously issued under QHWRA, decoupled the Capital Fund submission from the PHA Plan submission, combined Capital Fund and development regulations into a consolidated regulation, and made further revisions to the Capital Fund Program and related program requirements.

Subpart F of the CFP Final Rule addresses the development of both mixed-finance and conventional public housing. Capital Funds may also be used in conversions of public housing units to long-term, project-based Section 8 assistance under the Rental Assistance Demonstration (RAD) program under requirements provided in the RAD implementation notice (Notice PIH 2012-32 (HA), REV-2, issued June 15, 2015).

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Exhibit 1.1. Example Opinion Regarding Declaration of Trust

[Date]

[Name]
U.S. Department of Housing and Urban Development
Field Office Director
Any City, Any State

RE: ABC Housing Authority

Dear Mr./Ms. [Name]:

Our law firm is the [local attorney and general counsel] for _____ (name of Housing Authority), situated in _____ (county or city and state). We are well versed in real property ownership, declarations of trust, liens, and related matters.

At the request of my client, the _____(name of Housing Authority), we have examined the following Declarations of Trust.

Sunnyside Homes XYZ001000071

Declaration of Trust dated January 31, 2012, and recorded at Book 1379, Pages 1389-1391 of the _____(e.g., Clerk of Superior Court of Any County, Any State) covering and pertaining to 500 dwelling units known as.

Project No. XYZ001000071 — 500 dwelling units

Baker Homes XYZ001000081

Declaration of Trust dated December 31, 2000, and recorded at Book 1390, Pages 1631-1633 of the Clerk of Superior Court of Any County, Any State, covering and pertaining to 300 dwelling units known as:

Project No. XYZ001000081 — 300 dwelling units

These Declarations of Trust were duly recorded upon the public records of the Clerk of Court of Any County, Any State, and act as direct record notice from the date of recording of the provisions, terms and limitations all in favor of the United States of America, Secretary of Housing and Urban Development (HUD).

We have reviewed sufficient record documentation from which we can and do certify that the properties described in the Declarations of Trust are all of the ABC Housing Authority's properties encumbered under the ACC and United States Housing Act of 1937 and that there is no lien in place on the public housing property described in the Declarations of Trust. The Declarations of Trust are effective and in first position on the described real property for purposes of security.

Very truly yours,

Jones & Jones, P.C.
123 Main Street
Any City, Any State, XYZ 10000
Attorneys for ABC Housing Authority

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Chapter 2. Eligible Activities and Cost Limits

2.1. Eligible Activities Overview

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, as further described in Chapter 3, or approved by HUD for emergency work or work needed because of a Non-Presidentially Declared Natural Disaster.

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.

Role of HUD	Role of PHA
Review and approve PHA's 5-Year Action Plan that details how the PHA intends to address capital and management improvement needs using Capital Funds	Determine capital and Management Improvement needs through, in part, a Physical Needs Assessment and Energy Audit
Review and approve funding proposals for emergency work or work needed because of Non-Presidentially Declared Natural disaster	Create 5-Year Action Plan that details how the PHA intends to address these needs using Capital Funds and obtain board and HUD approval
Review and approve development and site acquisition proposals that describe the work the PHA intends to undertake	Prepare and submit proposals for development, site acquisition, and Emergency Work or work needed because of a Non-Presidentially Declared Natural Disaster;
Provide technical assistance and guidance to the PHA regarding which activities are eligible and ineligible to be funded with Capital Funds	Ensure that activities to be funded under the Capital Fund Program are Eligible Activities
Monitor PHA's expenditures to ensure that activities funded with Capital Funds fall under one of the categories of Eligible Activities	Ensure that improvements or purchases are modest in design and cost based on what is customary for the locality
Monitor overall PHA performance	

As further described below, eligible activities are divided into several major categories, including development, financing, and modernization. In undertaking these eligible activities, PHAs should apply the appropriate wage categories (i.e. Davis-Bacon and prevailing wages), detailed in Chapter 6.

Eligible Activities may be generally grouped according to the following budget line items (BLIs).

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BLI Quick Reference Chart	
Capital Fund Activity	BLI
Development and Physical Work	
• Site Acquisition	1440
• Site Improvement	1450
• Dwelling Structure	1460
• Dwelling equipment, nonexpendable	1465
• Non-dwelling structures	1470
• Non-dwelling equipment	1475
• Demolition	1480
• CFFP Debt Service Payments	1501 (by PHA) 9000 (by LOCCS)
Soft Costs	
• Financing	1430
• Transfer to Operations	1406
• Management Improvements	1408
• Resident Relocation and Mobility Counseling	1495
• Safety and Security	BLI for associated activity*
Other Costs	
• Administrative Costs	1410
• Capital Fund Program Fee	1410
• Audit	1411
• Fees and Costs, Legal	1430
• Homeownership	BLI for associated activity*
• Force Account Labor	BLI for associated activity*
• Physical Needs Assessment and Energy Audit	1430
• RAD	1503
• Economic Self-Sufficiency (soft cost)	1408
• Economic Self-Sufficiency (capital expenditure)	BLI for associated hard cost activity*

** Some items in this chart contain activities that can be booked in multiple categories but shall not be double booked. So Safety and Security could be booked under BLI 1430 for fees and costs like architect or engineers, under BI 1460 for dwelling structures related work such as security doors, security window screens, and BLI 1450 for site improvements such as exterior lighting on posts not attached to buildings. Similarly, Force Account Labor is charged to the BLI appropriate for work performed by staff.*

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2.2. Development.

Activities and related costs that add to (or significantly reconfigure) public housing units in a PHA's inventory, including construction and acquisition of additional public housing units, with or without rehabilitation, and any and all undertakings necessary for planning, design, financing, land acquisition, demolition, construction, or equipment of public housing units, and related buildings, facilities, and/or appurtenances (i.e., non-dwelling facilities/spaces).

Development also includes any Mixed-Finance Modernization, all relevant Modernization uses (other than Management Improvements), Financing uses, and development of non-dwelling space where such space is needed to administer, and is of direct benefit to, a Public Housing Project (*i.e. housing developed, acquired, or assisted by a PHA under the 1937 Act, and the improvement of any such housing*), including the residents. These types of Development activities are further described in Chapter 9 of this Guidebook and 24 CFR §§ 905.600, 905.602, 905.604, 905.606, 905.608 and 905.612.

Eligible Development costs include, but are not limited to, the costs for:

1. Construction and acquisition with or without rehabilitation, including property purchase, appraisal, survey, map, legal costs, and recording costs;

2. Development of Mixed-Finance Projects, including providing funds for eligible uses by loan, grant, lease, or other legal document;

3. Resident consultation and meetings;

4. Environmental review;

5. Consultants such as grant writers, strategic planners, architects, engineers, attorneys, accountants, or any other contractor necessary for any other aspect (e.g., financial, abatement and Section 3) for the project;

6. During the Initial Operating Period, operating expenses of a Public Housing Project (or public housing units in a Mixed-Finance Development) (1) from initial lease-up until Operating Funds are received from HUD for the project and (2) prior to initial occupancy, salaries of persons responsible for selecting tenants and/or handling tenant accounts, cost of stationery, forms, and office supplies used in operation of a project;

7. Predevelopment and planning costs such as market study, survey, title, applications for funding and associated fees, planning costs, including architectural and engineering fees, consulting fees, permit fees, inspection costs, costs of submitting funding applications (including consultants such as grant writers), and housing surveys;

8. Contractors such as abatement, remediation, demolition, construction, site and infrastructure contractors, as well as their fees and the underlying work (including demolition, grading, sanitary sewers, storm sewers, water distribution systems, gas distribution systems, electrical distribution);

9. Costs associated with undertaking a cost certification;

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10. Financing costs associated with the Development activities;

11. Structures, fixtures, associated amenities such as parking lots, playgrounds, laundries, childcare centers, community buildings, Neighborhood Networks computer centers, and space for service coordinators and community rooms for resident organizations;

12. Administrative costs attributable to a specific Development project, so long as they fall within the cost limits as further described in Section 2.4. The PHA is prohibited from taking an Administration Fee in connection with a Development project; and

13. Costs associated with undertaking a Physical Needs Assessment (PNA).

    Note on non-dwelling space: *If a community facility will be operated by an outside service provider, the PHA shall provide for HUD pre-review all leases of such space and shall maintain on file, for auditing purposes as requested by HUD, a copy of the agreement with the service provider indicating that the provider agrees to furnish, equip, operate, and maintain the facility, as well as provide insurance coverage.*

2.3. Financing.

Debt and financing costs (e.g., origination fees, interest) incurred by a PHA for Development or Modernization of Public Housing Projects, including Mixed-Finance Development, as further described in Chapter 9; the Capital Fund Financing Program (CFFP), as further described in Chapter 11; and any other use authorized under Section 30 of the 1937 Act.

Eligible financing costs include, but are not limited to, the costs of:

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;

3. Construction period interest;

4. Due diligence such as market study, environmental testing, title, and survey,

5. Fairness opinion; and

6. Other Development and Modernization activities necessary to obtain financing.

2.4. Modernization and Physical Work

Modernization. Modernization includes all eligible activities described in this Section except for Development and Financing.

Physical Work. Several Eligible Activities authorized by 24 CFR §905.200(b) 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. They are: demolition, reconfiguration, emergency activities, energy efficiency, non-routine maintenance, planned code compliance, and vacancy reduction.

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

1. **Demolition costs** are those costs needed to demolish dwelling units or non-dwelling facilities, as approved by HUD, other related costs for activities such as relocation, clearing, and grading the site after demolition or prior to development; and subsequent site improvements to benefit the remaining portion of the existing Public Housing Property, as applicable. Rehabilitation that is historically described in the Capital Fund Program and previous programs as "modernization" can include demolition costs. Development and related costs to develop dwelling units or non-dwelling facilities approved by HUD can include costs for activities such as relocation, clearing and grading the site.

2. **Reconfiguration.** Reconfiguration is the altering of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units). Reconfiguration costs are those costs needed to modify existing dwelling units to units with different bedroom sizes or to a non-dwelling use and may include the expansion of existing dwelling space to enlarge room sizes, provide storage, or add additional bedrooms. Depending on the scope of the work and result to unit counts, reconfiguration may need to be considered Development work,

3. **Planning Costs are those 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 prior-year taxes and deducted from the purchase price, and amounts disbursed for current taxes prorated to the date of acquisition, the cost of boundary, property line, topographical, and utility surveys, including maps and perimeter descriptions; the cost of monuments and landmarks; and the cost of all blueprints and work product furnished by the surveyor; appraisals; title information such as legal services, abstracts, title certificates, title commitments and policies, and other costs in connection therewith, legal costs, including those related to condemnation proceedings.

5. **Site Improvement costs related to a Public Housing Modernization or Development Project, including:**

    - Grading. The cost of stripping top soil, and the cutting, filling, back filling, and grading necessary to bring the entire area outside of the buildings to the subgrade levels of paved, surfaced, and planted areas.

    - Sanitary Sewers. The cost of sanitary sewers, including the cost of normal excavation, backfilling, piping, manholes, cleanouts, sewage pumping, and disposal facilities, branches and connections up to but outside of building walls, carrying such branches and connections through buildings en route to other buildings.

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- Storm Sewers. The cost of storm sewers, including normal excavation and backfill, piping, manholes, street catch basins and inlets, yard catch basins and inlets, and cleanouts.

- Water Distribution System. The cost of water distribution systems, including normal excavation and backfill, piping, valves and boxes, hydrants, curb cocks and boxes, yard drinking fountains, manholes, and master meter installation.

- Gas Distribution System. The cost of gas distribution systems, including normal excavation and backfill, piping, valves and boxes, curb cocks and boxes, drip pots; regulators, and master meter installations.

- Electric Distribution System. The cost of electric distribution systems, including normal excavation, backfill, overhead lines and poles, underground lines, transformers, transformer vaults, yard lights, master meter installations, as well as the cost of branches and connections up to but outside of building walls, and the cost of carrying such branches and connections through buildings en route to other buildings and any costs of street lighting and fire and police alarm systems.

- Correction of Abnormal Subsoil Conditions. The cost of abnormal excavation resulting from unusual subsoil conditions, such as rock, muck, water, quicksand, and over and above the cost for normal rough grading and excavation work.

- Excess Dwelling and Non-dwelling Foundations. The cost of excess foundation work in connection with buildings, utilities, and other site improvements where the unusual character of the subsoil or site topography requires piling, caissons, underpinnings, or very unusual depth of footings.

- Paved Areas. The cost of streets and alleys, including the cost of sub-grading, paving, curbs, curb and gutters; the cost of walks; the cost of constructing driveways, parking areas, playgrounds, and other similar surfaced areas.

- Finished Grading, Lawns, and Planting. The cost of subgrade preparation, top soiling, seeding, sodding, planting, including trees and scrubs, and other landscaping.

- Miscellaneous. The cost of building retaining walls and bulkheads, structural playground facilities (such as spray-pools), project signage, fences, garbage stations, and other similar appurtenances, and cost of benches, clotheslines, flag poles, when permanently installed.

6. Dwelling Structure costs related to a Public Housing Development Project, including:

- General. The cost of normal excavation and backfill, normal foundations and other structural costs of dwelling buildings and spaces, including incinerators, laundry facilities, closet spaces, halls, corridors, entrance lobbies, equipment spaces, perambulator and other tenant storage spaces. Also, the cost of fixed cabinets, cupboards, shelving, and other built-in facilities.

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- Plumbing. The cost of all interior plumbing, gas, and domestic hot and cold water installations within dwelling building walls; piping, fixtures, bathroom accessories, domestic hot water heaters, circulating pumps. Individual gas and water meters should also be charged to this account.

- Heating. The cost of all heating installations within dwelling building walls or in group or central plants; piping, ducts, radiators, vents, grills, fans, fixed heating units (such as floor furnaces, panel type wall heaters, or other heating units built into the structure), and all accessories. If a central heating plant is provided, include the entire cost of plant structure, equipment, heating mains, domestic hot water mains, and pipe tunnels. The cost of pipe tunnels carrying several types of utility lines shall be prorated in the same proportion as the cost of the lines carried.

- Electrical. The cost of interior dwelling electrical installation (from service drops); conduits, wiring devices, broadband wiring installation, boxes, receptacles, master meter, individual meter, switches, finished electrical hardware, circuit breakers, lights, fixtures, and all other appurtenances.

7. **Dwelling Equipment costs related to a Public Housing Modernization or Development Project,** including the cost of all ranges, refrigerators, and other equipment that meets building codes but are not connected to ducts or pipes for the distribution of heat, 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 (including central processing, and peripheral equipment such as input and output machines, data preparation machines, data storage machines, and major components that "upgrade" and meet the requirements of management improvements under the Capital Fund Program the processing of computers and/or peripheral equipment).

10. **Demolition costs** incurred in connection with a Public Housing Modernization or Development Project for demolishing and clearing existing structures and other improvements, disconnecting utilities, and clearing the site. *Note*: See 24 CFR Part 970 for requirements related to demolition of public housing units.

11. **Purchase or Leasing of Vehicles**, subject to the restrictions identified in this section and 2 CFR Part 200. The purchase or leasing of new or replacement vehicles is an eligible cost where the vehicle is needed on a full-time basis to administer/implement the physical and Management Improvements set forth in the CFP Budget. Furthermore, in order to be an eligible cost under Management Improvements, the vehicle's use must also be justified for a Public Housing Modernization or Development Project, or on a PHA-wide basis, as is needed to: (1) upgrade or

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improve the operation or maintenance of the Public Housing Projects, (2) promote energy improvements, (3) sustain the physical improvements, or (4) correct a management deficiency. [24 CFR §905.200(b)(7)]

- Non-Passenger Vehicles.
  - Where needed to carry out physical improvements, as set forth on the Physical Needs Assessments, 5-Year Action Plan, and with Force Account Labor only, the cost of non-passenger vehicles, such as a truck, is an eligible cost.
  - Where needed to carry out Management Improvements, the cost of non-passenger vehicles, such as a truck or snowplow, is an eligible cost. No proration is needed where such vehicle will be used exclusively for Capital Fund eligible activities.
- Passenger Vehicles. The cost of new or replacement passenger vehicles is an eligible cost only where the vehicle will be used on a full-time basis to carry out the Capital Fund Program. For example, a car or van is needed by the Capital Fund coordinator or in-house architect on a full-time basis to visit work sites or to travel to resident meetings related to Capital Fund activities. When passenger vehicles are needed on less than a full-time basis to carry out the Capital Fund Program, the cost of the passenger vehicles are ineligible Capital Fund costs, but are eligible Operating Fund costs to the extent that the vehicles are used on a full-time basis for operating and management of the Public Housing Projects and meet the requirements of 2 CFR Part 200.

12. **Emergency Activities**. Capital Fund-related activities identified as Emergency Work. Emergency Work does not need to be covered by an approved 5-Year Action Plan. Upon determining the need for Emergency Work, a PHA should perform the work, and amend the Annual Statement by making a note that the work constitutes Emergency Work for which no HUD preapproval is required.

13. **Energy Efficiency**. Activities designed to promote energy conservation and efficiency measures, including any of the following unless these work items are part of an Energy Performance Contract (EPC) financing approved and receiving corresponding incentives under 24 CFR 990.185 or as part of an EPC Section 30 approval:

    - New or updated Energy Audits, but only to the extent that Public Housing Operating Funds are not available and the audit is part of a Capital Fund program;
    - Implementation of any energy and water conservation measure identified in the Energy Audit;
    - Integrated utility management and capital planning;
    - Installation of fixtures or fittings to increase energy and water-use efficiency;
    - Installation and use of Energy Star appliances as part of a replacement program and in a cost-effective manner; and

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- Automation of utility and energy management systems, including changing from master metering to individual meters as part of a Capital Fund program.

14. **Non-routine Maintenance**. 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.

    Note: *A PHA should analyze carefully the appropriateness of any premature replacement of serviceable building components, systems, equipment, or materials. Generally, a PHA should not undertake premature replacements except where a payback analysis indicates that the replacement will be cost-effective, assuming a simple payback term of 10 years or less.*

15. **Planned Code Compliance.** Building code compliance includes design and physical improvement costs associated with compliance with a) local building code or the Uniform Physical Condition Standards (UPCS) under PHAS, b) a national building code, such as those developed by the International Code Council or the National Fire Protection Association, and c) the 2009 International Energy Conservation Code (IECC), or ASHRAE standard 90.1-2010, "Energy Standard for Buildings Except Low-Rise Residential Buildings," for multifamily high-rises (four stories or higher), or a successor energy code or standard that HUD adopts for new construction.

16. **Vacancy Reduction.** 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.

2.5. Soft Costs.

Several Eligible Activities authorized by 24 CFR §905.200(b) may be grouped together as soft costs, that is, eligible activities and costs that do not impact the physical structures. They are: economic self-sufficiency, Management Improvements, resident relocation and mobility counseling, and safety and security.

Eligible soft costs include, but are not limited to:

1. **Economic Self-Sufficiency**. Capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents, including costs for resident job training and development of resident-owned businesses activities to enable residents and their businesses to carry out Capital Fund-assisted activities.

2. **Management Improvements.** Noncapital activities, as described in more detail at Table 2-2, which can be Project-specific or PHA-wide improvements, that are needed to 1) upgrade or improve the operation or management of the PHA's Public Housing Projects, 2) promote energy conservation, 3) sustain physical improvements at those projects, or 4) correct management deficiencies, identified by HUD, an audit, or the PHA itself. These management deficiencies may

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be identified by the PHA, HUD, or a PHA auditor. Management Improvements are Eligible Activities only for the implementation period of the physical improvements, unless a longer period (as proposed by the PHA and approved by HUD) is clearly necessary to achieve performance targets. However, that period may not exceed 4 years. *Note*: 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.

Eligible training and technical assistance activities include, but are not limited to, the following:

- Training for PHA personnel in operations and procedures, including resident selection, rent collection, and eviction;
- Improvements to the PHA's management, financial, and accounting control systems;
- Technical assistance to a Resident Council or Resident Management Corporation (RMC) to assess feasibility of carrying out management functions for a specific project or projects;
- Training residents in skills directly related to the operation and management of the development(s) for potential employment by the RMC;
- Training RMC board members in community organization, board development, and leadership;
- Costs associated with the formation of an RMC;
- Costs to promote more effective resident participation in the operation of the PHA's 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; and
- Development and implementation of improved applicant screening procedures.

3. **Resident Relocation and Mobility Counseling Due to Capital Fund Activity.** 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 Public Housing Requirements for permanent or temporary relocation, as a direct result of modernization, development, rehabilitation, demolition, disposition, reconfiguration, acquisition, an emergency, or Non-Presidentially Declared Natural disaster.

Eligible relocation costs include costs incurred for the relocation of public housing residents from the site of a low-income housing project in connection with Development or Modernization. Such costs include, but are not limited to:

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- Public housing residents. Moving expenses and direct losses of property, and for additional relocation payments to assist such persons to acquire decent, safe, and sanitary dwellings;
- Direct expenses for the cost of services incident to the relocation of public housing residents, including the salaries of administrative personnel assigned full-time duties related to the relocation of public housing residents;
- Settlement costs to displaced occupants for reasonable and necessary expenses incurred in connection with PHA acquisition or redevelopment of property (e.g., recording fees and transfer tax); and
- Replacement Housing Payments for an owner-occupant of a single or two-family dwelling acquired by the PHA.

2.6. Safety and Security.

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, the following:

- Security cameras;
- Security lights;
- Security equipment (e.g., bars for windows, new doors and locks, fencing);
- Surveillance equipment;
- Access control systems;
- Training of in-house security personnel as a Management Improvement;
- 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;
- Conversion of a dwelling unit into non-dwelling space or construction of non-dwelling space for use by project security and safety management, voluntary tenant patrols, security guards, or local law enforcement agencies; and
- Stabilization of buildings through consolidating occupied units into a specific area and securing vacant units/floors.

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2.7. Other Costs.

Several Eligible Activities authorized by 24 CFR §905.200(b) may be grouped together as other costs, generally Capital Fund eligible costs that do not impact the physical structures or fit in the soft costs as described above.

Administrative Costs. For PHAs that have not converted to asset management pursuant to Supplement to HUD Handbook 7475.1 REV., CHG-1, Financial Management Handbook, Administrative Costs (BLI 1410) that are necessary for the planning, design, implementation, and monitoring of the physical and Management Improvements are eligible costs and include the following:

- Salaries. The salaries of nontechnical and technical PHA personnel assigned full-time or part-time to Capital Fund activities are eligible costs only where the scope and volume of such work are beyond that which could be reasonably expected to be accomplished by such personnel in the performance of their non-Capital Fund duties. The PHA shall properly apportion to the appropriate program budget any direct charges for the salaries of personnel assigned full- or part-time to Capital Fund activities. The PHA may allocate salary expense through use of the time sheet method, as set forth in 2 CFR Part 200. The allocation method shall reflect a fair distribution between all programs administered by the PHA for which there is a cost implication. The cost allocation methodology is subject to HUD review and approval. Any direct charges to the Capital Fund Program for salaries shall result in an appropriate revision to the PHA's operating budget.

- Employee Benefit Contributions. PHA contributions to employee benefit plans on behalf of nontechnical PHA personnel are eligible costs in proportion to the amount of salary charged to the Capital Fund Program. The cost of terminating an employee hired on a temporary basis to work on Capital Fund activities is an eligible cost, such as the expense of unemployment compensation where required by state law. The PHA shall include an estimate of these costs in the CFP Budget.

- Preparation of Documents. Eligible costs include the preparation of Capital Fund Program required documents.

- Resident Participation. Eligible costs include those associated with ensuring the meaningful participation of residents in the development of the Annual Submission and 5-Year Action Plan, 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. See HUD Office of General Counsel Handbook 1530.1 rev-5. 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).

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Capital Fund Program Fee (CFP Fee). [RESERVED]

1. Audit. Costs of the PHA's annual audit attributable to the portion of the audit covering the Capital Fund Program in accordance with Chapter 7.

   Legal Costs. Legal costs associated with Eligible Activities funded under the Capital Fund Program, including costs related to preparing property descriptions for the DOT or DORC, zoning, permitting, environmental review, procurement, contracting, Development activities described in Chapter 9, and reasonable fees paid to attorneys for handling litigation related to the Capital Fund Program. *Note*: Such costs are charged to Legal Expense and Costs (BLI 1430).

5. Homeownership. Activities associated with public housing homeownership, as approved by HUD, including the following:

   - Development activities listed in Section 2.2.A above and financing uses listed in Section 2.2.B above, in service of a public housing homeownership program;
   - Modernization of existing public housing units for sale to qualified homebuyers;
   - Feasibility study for conversion of rental units to homeownership;
   - Preparation costs for application to convert rental units to homeownership;
   - Construction or acquisition of units;
   - Demolition to make way for new construction;
   - Abatement of environmentally hazardous materials;
   - Site improvements;
   - Construction or permanent financing, such as write-downs for new construction;
   - Acquisition costs with or without rehabilitation;
   - Homebuyer assistance;
   - Relocation assistance and mobility counseling;
   - Homeownership counseling;
   - Administrative and marketing costs;
   - Down payment assistance;
   - Closing cost assistance; and
   - Subordinate Mortgage loans.

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2.8. Ineligible Activities.

This 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 (N.B. Emergency Work or Non-Presidentially Declared Natural Disaster assistance 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 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.

6. Benefitting 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 revitalization 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. Security Services. Ongoing security services, including:

   - Contracts with local police departments including above baseline police services except where permitted by HUD FY Appropriations Acts;

   - The salaries and benefits for security guards, patrols, or police officers (either full-time, part-time, or after hours); and

   - 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;

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- Educational enrichment and recreational activities, including social organizations; and
- 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; and
10. Other Activities. Any other activities and costs that HUD may determine are ineligible on a case-by-case basis, consistent with the 1937 Act and its regulations.

2.9. Cost and Other Limitations.

Allocation of Costs with Other Programs.

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, Capital Fund-eligible costs are limited to the amount directly attributable to the public housing program.

Modernization Cost Limits.

A PHA may not modernize a Public Housing Project if the Modernization costs are more than 90% of the applicable TDC, also known as Reasonable Cost. Additional costs not subject to the TDC (exceptions to TDC) are

- Emergency Work;
- Essential maintenance necessary to keep a Public Housing Project habitable until a demolition or disposition application is approved; or
- The costs of maintaining the safety and security of a site that is undergoing demolition. [24 CFR § 905.314(g)]

Administrative Cost Limits and CFP Fee.

- Administrative Cost Limits (for non-asset management PHAs). A PHA that is not subject to asset management shall not budget or expend more than 10% of its annual Capital Fund grant on Administrative Costs, in accordance with the 5-Year Action Plan.
- CFP Fee (for asset management PHAs) [RESERVED].Modernization Fee Cap.For modernization work, the PHA shall not budget or expend more than 10% of its annual Capital Fund grant on Administrative Costs, in accordance with its 5-Year Action Plan. The 10% 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.
- Development. For Development work with Capital Fund and RHF grants, the administrative cost limit chargeable by an asset management PHA is 3% of the total project budget, or, with HUD's approval, up to 6% of the total project budget. [24 CFR § 905.314(h)]

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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% to 10%, with scheduled annual reductions to transition downward, as follows:

Fiscal Year	Maximum % allowed
2014	18%
2015	16%
2016	14%
2017	12%
2018	10%

Force Account Labor (including materials and equipment).

A PHA may use Force Account Labor, including materials and equipment for Development and Modernization activities if 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. [24 CFR § 905.314(j)]

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. [24 CFR § 905.314(k)

Transfer of Capital Funds for Operating Costs.

A PHA may use Capital Funds for Operating Fund purposes only if it is included in the 5-Year Action Plan that is approved by the PHA Board of Commissioners and HUD, subject to the limits described in paragraphs G.1 and G.2, below. Capital Funds identified in the 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.

Unless otherwise provided in annual HUD Appropriation Act:

- Large PHAs. A PHA with 250 or more public housing units may use no more than 20% of its annual Capital Fund grant for activities that are eligible under the Operating Fund at 24 CFR Part 990.

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- Small PHAs. A PHA with less than 250 public housing units, that is not designated as troubled under PHAS, may use up to 100% 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 written determinations and provide such records of this determination upon HUD request 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)] *Note*: A Small PHA may also use its Operating Funds for Capital Fund Program purposes under the same conditions.

- 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.

Total Development Cost (TDC) Limit.

The TDC limit is calculated by HUD according to 24 CFR §905.314(c). HUD typically publishes updated TDC and HCC limits annually. The TDC limit is the maximum amount of Public Housing Capital Assistance that may be used for HCC and Community Renewal Costs on a Project, absent a waiver from HUD. Public Housing Capital Assistance is defined as assistance provided by HUD under the 1937 Act in connection with the development and modernization of public housing, including Capital Fund assistance provided under Section 9(d) of the 1937 Act, public housing development assistance provided under Section 5 of the 1937 Act (prior to QHWRA), 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 1937 Act, and HOPE VI grant assistance, as well as other funds deemed to be Capital Fund assistance in the future under applicable statutes, regulations, or notices.

- HCC refers to the HUD-calculated cap on use of Public Housing Capital Fund Assistance for dwelling unit hard costs. Specifically, 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, and the payment of Davis-Bacon wage rates (such as general contractor, and finish landscaping).

- Community Renewal Costs describes allowable development costs, other than HCC, that may be funded by Public Housing Capital Assistance. The maximum amount is the difference between allowed TDC and calculated HCC. Specifically, it is 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 non-dwelling facilities, contingency allowance, insurance premiums, any initial operating deficit, onsite streets, onsite utilities, and other costs necessary to develop the Project that are not covered under the HCC.

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

HUD determines the HCC limit pursuant to 24 CFR §905.314(d) and typically publishes it annually along with an updated TDC limit. The HCC limit does not apply to the acquisition of existing housing, whether or not such housing will be rehabilitated. However, the TDC limit does apply to such acquisition. The HCC limit does not apply to the rehabilitation of Public Housing Projects except for Mixed-Finance Modernization.

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Chapter 3. Planning, Annual Submission, and Distribution of Funds

3.1. Overview.

This chapter describes the Capital Fund planning process and the role of HUD in assisting PHAs to determine the extent of their capital needs and the available strategies for achieving them.

Planning. The Capital Fund planning process begins with a Physical Needs Assessment (PNA) and Energy Audit to determine the extent of the PHA's capital needs. The PHA should also consider its PHAS score and the progress made since its last HUD-approved 5-Year Action Plan and PHA Plan. From these, the PHA selects the public housing projects to be rehabilitated or redeveloped, multi-project modernizations, or other eligible activities to be conducted with anticipated Capital Funding. In preparation for submitting the plans discussed in this chapter, the PHA then conducts outreach meetings with public housing residents and resident advisory boards (RABs), and posts its Capital Fund budgets for at least 45 days.

Capital Fund Program Annual Submission. Each year, a PHA must make a 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, which details specific work to be performed in each year.

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, as defined in 24 CFR Part 903. 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. *Note:* The two hearings required for each type of plan (the PHA Plan and the 5-Year Action Plan) can still be held together for the purposes of RAB consultation and fulfilling the notice and comment period, or can be held separately.

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.

Approval, Drawdown, and Expenditure. The Field Office's approval of a Capital Fund Submission does <u>not</u> constitute approval to undertake activities identified in the Capital Fund Submission that require separate approvals, including demolition, disposition, development, and securing secondary financing with public housing real or personal property including approvals under section 30 of the 1937 Act. See Chapter 11 of this Guidebook.

Drawdowns and expenditures are not permitted until an Environmental Review has been completed by the Responsible Entity (under 24 CFR Part 58) or HUD (under 24 CFR Part 50). Documentation from a Responsible Entity of an exemption or categorical exclusion from environmental review must be obtained before such funds can be released. A PHA may process a separate request for determination of exemption or categorical exclusion to obtain those funds in advance of environmental review for the remainder of the activities covered by the grant. The PHA must provide evidence of the Responsible Entity's documentation of the exemption or categorical exclusion to the field office to access the funds.

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Special Requirements for Moving to Work PHAs. Requirements regarding planning, annual submission, and distribution of funds for PHAs participating in the Moving to Work (MTW) program are set forth in the MTW Agreement and related guidance issued by MTW program staff within the Office of Public Housing Investments (OPHI) at Headquarters, as further described in Chapter 10.

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Capital Fund Program (CFP) Annual Formula Grant Process

Step 1. Public Housing Authority (PHA) Preparation for Annual Capital Fund Formula Grant Submission

Step 1.
1. 45 Day Notice – post planned CFP submission
2. Public Hearing & Resident Advisory Board (RAB) Consultation
3. Board Resolution approving 5-year action plan (on file if not troubled)
4. IMS/PIC Certification
5. DUNS renewal in the System for Awards Management (SAM) – DUNS Number and Current SAM Registration
6. Physical Needs Assessment (PNA) – proposed submit every 5 years
7. Energy Audit – every 5 years.

Step 2. PHA Submission for Annual Capital Fund Formula Grant

Step 2.
1. Annual Contributions Contract (ACC) Amendment(s)
2. Performance and Evaluation Report (P&E Report)
3. 5-Year Action Plan (including an annual budget for each year covered by the 5-Year Action Plan)
4. Statement of Significant Amendment
5. Additional Certifications
   a. Disclosure of Lobbying Activities – SF-LLL
   b. Civil Rights Compliance in a form prescribed by HUD;
   c. Certification of Payments to Influence Federal Transactions (Form HUD-50071); and
   d. Certification of Compliance with Public Hearing Requirements in a form prescribed by HUD.

Step 3. HUD Processing PHA Annual Capital Fund Formula Grant Submission

Step 3.
1. Field Office (FO) confirms Environmental Requirements are met
2. Executes ACC Amendment and maintains CFP required paperwork for records management
3. Spreads initial budget in the Line Of Credit Control System (LOCCS) and re-spreads Budget Line Items (BLI) according to HUD approved budget

Step 4. PHA Implementation Annual Capital Fund Formula Grant

Step 4.
1. Maintaining obligations within BLI thresholds
2. LOCCS Monthly reporting
3. EPIC quarterly reporting
4. Annual Performance and Evaluation (P&E) Report
5. Obligation End Date (OED) 90% Obligated within 24 Months of OSD
6. Disbursement End Date (DED) 100% Disbursed within 48 Months of OSD

Step 5. Close out Procedure for Annual Capital Fund Formula Grant

Step 5.
A. PHA
   1. Submits Actual Modernization Cost Certificate (AMCC) or Actual Development Cost Certificate (ADCC) and P&E Report within 90 days of DED.
   2. Includes AMCC and P&E Report in Audit, if necessary
   3. Continues Monthly reporting in LOCCS continues until HUD places grant in "Pre-Audit" status in LOCCS

B. Field Office
   1. Reviews, Approves AMCC/ADCC and P&E Report
   2. Enters Pre-Audit Date in LOCCS
   3. Transmits completed Close out package to CFO Ft. Worth Accounting Center to place grant in Post Audit Status in LOCCS

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3.2. Planning – 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 assess its portfolio's capital needs to facilitate capital planning and to take advantage of capital improvement and spending prioritization opportunities. A PNA also enables HUD 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 PNA requirements found in the CFP Final Rule. The CFP Final Rule requires that Large PHAs (250 units and larger), 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 as of the writing of this Guidebook**.** HUD will issue guidance on the time and format for submission of a PNA in a notice(s) that will follow publication of a final rule on PNAs and energy audits, and which will become an amendment to the CFP Final Rule.

Implementation of PNA Rule; Pending Changes. *In 2011, HUD issued a proposed rule (76 Federal Register 43219 (July 20, 2011)) that would establish standards for PNAs, but as of the date of publication of this Guidebook, no final rule has been issued; however, Congress has provided additional stipulations.*

Section 233 of the Federal Fiscal Year 2015 HUD Appropriations Act provides: "None of the funds made available by this Act may be used to require or enforce the Physical Needs Assessment (PNA)". This section has created some understandable questions and concerns. Section 233prohibits HUD from requiring PHAs to conduct a PNA during Federal Fiscal Year (FFY) 2015 and also prohibits HUD from enforcing a PNA requirement in FFY 2015. However, it does not prohibit the use of Capital Funds or Operating Funds by a PHA to perform a PNA. PHAs and other HUD programs rely upon a PNA to access credit markets and for their own local planning. PHAs may have contractual relationships with providers of these services, and this is intended to clarify that nothing in the Appropriations Act prevents a PHA from continuing that relationship if it had planned to use FFY 2015 funds to pay for the services. PHAs should not be deterred from pursuing PNAs planned for capital planning purposes. Voluntary performance of a PNA is not prohibited by the Appropriations Act. Further, section 233 does not modify or remove the existing requirement in the Capital Fund regulation at 24 CFR 905.300(a) for PHAs to perform a PNA; but does prevent HUD's ability to require or enforce the regulation.

In supplemental appropriation documentation, Congress advises HUD to continue working on the PNA rule and requires HUD to provide a further report to Congress in March 2015 on HUD's efforts to reduce the burden of the PNA on PHAs. HUD's final PNA rulemaking is close to publication. However, its implementation as to FFY 2015 funding is limited by Section 233. HUD remains committed to the principle of capital planning for public housing as a key component to the future of the program.

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3.3. Planning – 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 as it can be used to help hold down operating costs, including the cost of utilities, and ensures that the limited funds available for operations are used as efficiently as possible.

Pending Changes. In 2011, HUD issued a proposed rule that would eliminate 24 CFR Part 965, Subpart C and bring Energy Audits into the Capital Fund, but as of the date of publication of this Guidebook, no final rule has been issued.

The proposed rule may be found at Public Housing Energy Audits: Proposed Rule, 76 Federal Register 71287 (Nov. 17, 2011).

3.4. Planning – Public Hearing.

The public hearing and accompanying notice 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. Among other things, it discloses changes in admissions and occupancy policies, as well as development plans and new PHA priorities.

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 served by the PHA.

The PHA may consolidate this hearing with the Annual Plan public hearing, or may conduct the two hearings separately.

At least 45 days before the public hearing is to take place, the PHA must:

- Make the Capital Fund Submission available to the residents and the RAB;
- Publish a notice informing the public that the information is available for review and inspection, stating that a public hearing will take place on the Capital Fund Submission, and the date, time, and location of the hearing; and
- Conduct reasonable outreach activities to encourage broad public participation in the review of the Capital Fund Submission.

The Capital Fund Submission must include a copy of the recommendations made by the RAB(s) and a description of the manner in which the PHA addressed those recommendations.

Timing of Public Hearing.

If Capital Funds are distributed prior to the submission of the PHA Plan in the PHA's fiscal year, then the PHA may use the public hearing from its previous fiscal year, so long as items in the 5-Year Action Plan were covered in that hearing. Except where permitted through the fungibility flexibility identified in

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Chapter 7 of this Guidebook, the PHA may not fund work items that have not been approved through the RAB consultation and public hearing. Such new work items must go through the public hearing process before being funded.

3.5. Planning – Pre-Submission Details.

The additional pre-submission details identified below ensure the correct unit counts are used for calculating the Capital Fund allocation, authorizing the PHA to adopt the 5-Year Action Plan and/or reject any Capital Fund allocation, and ensuring that the PHA has a current registration in the System for Award Management (SAM) for submission.

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. As further described in Chapter 4, the Capital Fund formula is based on the unit information certified by PHAs and uncertified unit information for PHAs that do not complete certification, 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 amount 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. Only PHAs that are troubled under Section 6(j) of the 1937 Act 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.

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DUNS Number and Current SAM Registration.

The Office of Management and Budget requires that all applicants for HUD financial assistance have a Dun and Bradstreet Universal Numbering System (DUNS) number that is registered in the System for Award Management (SAM).

In accordance with PIH 2011-60, 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.

SAM, previously known as the Central Contractor Registration or CCR, collects, validates, stores and disseminates data in support of agency missions, including federal agency contract and assistance awards, and the electronic payment process.

As of the date of this Guidebook, information about the SAM registration process is available at www.sam.gov, and technical assistance is available from the Federal Help Desk at www.fsd.gov. A short guide to renewing or updating a SAM registration is also provided at Appendix 3.2.

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, Headquarters will suspend the PHA's access to the funds until the PHA provides evidence of its current SAM registration to the Field Office (for example, a copy of the confirmation email from the PHA's SAM renewal or a screenshot of its SAM registration expiration date). Once the Field Office receives such evidence, the Field Office 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.*

Rejection of Capital Fund Grant.

If a PHA elects to reject any Capital Fund grant, including any RHF grant, as further described in Chapter 5, the PHA's Executive Director must send a written statement to the Field Office that identifies the grant number and dollar amount of the grant(s) to be rejected.

If a PHA does not send a written statement to the Field Office, the grant will be held in reserve for 90 days after the Capital Fund Submission due date, after which the grant will no longer be available to the PHA.

PHAs must have on file a resolution from the Board of Commissioners rejecting the Capital Fund grant(s) for the Federal Fiscal Year.

Summary of Planning Steps. The following checklist summarizes the key planning components to be completed prior to preparing a Capital Fund Submission.

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Planning the Capital Fund Submission	Yes	N/A
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		

3.6. Capital Fund Submission.

Each year the Capital Fund Submission must be received in the Field Office by the date identified on the HUD website or in the applicable PIH notice.

Capital Fund Submissions that are received in the Field Office after the due date will have the **same Obligation End Date as those that were received in a timely manner.**

If a Capital Fund Submission is not received by the deadline, Headquarters will issue a second deadline to submit the signed ACC Amendment to the Field Office. If the Field Office does not receive the Capital Fund Submission by the second deadline, Headquarters may, in its discretion, de-reserve the applicable Capital Funds.

Contents of Capital Fund Submission.

The "Capital Fund Submission" consists of the documents identified in this Section 3.6. PHAs are advised to check the Capital Fund web page for current PIH guidance on the Capital Fund Submission.

Capital Fund Submission checklists for PHAs (Qualified and Other) and MTW PHAs may be found at the end of this chapter.

As of the date of this Guidebook, the Capital Fund Submission shall include:

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.

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2. 5-Year Action Plan with a Budget for Each Year. 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 shall 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 CFFP loan, the budget should include debt service payments for the grants from which the payments are scheduled.

3. Performance and Evaluation Report (P&E Report). PHAs that are troubled or not in compliance with section 9(j) of the 1937 Act must prepare and submit a P&E Report for all open grants to the Field Office as part of the Capital Fund Submission. All other PHAs must prepare a P&E Report for all open grants and keep it on file at the PHA. At any time HUD may request the P&E Reports on file at the PHA.

4. Statement of Significant Amendment. The Statement of Significant Amendment identifies the criteria that the PHA will use for determining whether an amendment or modification to the 5-Year Action Plan constitutes a Significant Amendment or Modification, as described in the CFP Final Rule and Section 3.7 below.

5. Additional Certifications. The PHA is also required to submit various certifications to HUD, in a form prescribed by 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); and
   - 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 may submit the certifications adopted with its most recent PHA Plan. This affects timing only; each certification must be updated and submitted annually.

3.7. Amending the 5-Year Action Plan.

After submitting its 5-Year Action Plan, a PHA may amend or modify the plan.

Each 5-Year Action Plan shall include the PHA's criteria for determining whether an amendment or modification is significant. Any proposed demolition, disposition, homeownership, CFFP proposal,

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development, RAD conversion, or mixed-finance proposal is considered a Significant Amendment to the 5-Year Action Plan. At its discretion, the PHA may add additional criteria. Based on the criteria contained in its 5-Year Action Plan, a PHA determines whether a proposed amendment or modification is significant.

If the amendment or modification is a Significant Amendment or Modification, the PHA:

- May not adopt the amendment or modification until it is approved by the Board of Commissioners in a meeting that is open to the public; and
- May not implement the amendment or modification until notification of the amendment or modification is provided to HUD and the amendment or modification is approved by HUD in accordance with HUD's plan review procedures.

If the change is not a Significant Amendment or modification no HUD approval is needed.

3.8. Relationship Between Capital Fund Submission and PHA Plan.

The Annual PHA Plan and the 5-Year Plan contain required disclosures that relate to Capital Funds and development uses. These requirements did not change with the decoupling, but the procedure has.

PHAs that submit Annual Plans (i.e., PHAs that are not Qualified PHAs or MTW PHAs) must include a statement of capital improvements needed in the Annual Plan, as required by 24 CFR §903.7(g). Previously, PHAs met this requirement by including copies of their Capital Fund planning documents. In 2013, HUD published the CFP Final Rule, which decoupled the Capital Fund Submission from the PHA Plan. However, PHAs are still required to incorporate some information on the capital improvement needs in the Annual Plan.

To comply with this requirement, a PHA that is required to submit an Annual Plan must reference the most recently approved 5-Year Action Plan in its Annual Plan. PHAs can reference the form by including the following language in the Capital Improvements Section PHA Plan Template: "See 5-Year Action Plan approved by HUD on MM/DD/YYYY."

The approved 5-Year Action Plan should be included with materials made public through the hearing and comment process. PHAs do not need to attach a copy of the approved 5-Year Action Plan to the Annual Plan because the Field Office already has a copy. During the Annual Plan review, the Field Office will not be required to review the previously approved 5-Year Action Plan.

3.9. Approval of 5-Year Action Plan.

The Capital Fund Submission must comply with the requirements of this chapter. A PHA must revise or correct information that is not in compliance. HUD has the authority to impose administrative sanctions until the appropriate revisions are made. HUD will review the Capital Fund Submission to determine whether:

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- All of the information that is required to be submitted is included;
- The information is consistent with the needs identified in the PNA and data available to HUD; and
- 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.

If the Field Office determines that the 5-Year Action Plan is not approvable, it shall prepare a letter to the PHA for the Public Housing Director's signature disapproving it and explaining the deficiencies that need to be corrected in order to make it approvable.

If the Field Office determines that the 5-Year Action Plan is approvable, it shall prepare a letter to the PHA for the Public Housing Director's signature approving the Plan and identifying any conditions to the approval, if applicable.

Approval of the Capital Fund Submission by the Field Office does not constitute approvals that are required separately, such as environmental review, public housing development, and placement of Security Interests on public housing property which requires HUD approval.

3.10. Spreading Capital Fund Grants into LOCCS.

LOCCS Initial Budget.

On a schedule established annually by HUD OCI the Field Office will spread the initial budget for all Capital Fund grants as follows:

LOCCS Initial Budget			
BLI 0100-Reserved Budget	72% of the grant authorized amount	Not disbursable	Contact Field Office
BLI 1408-Management Improvements	2014 – 18%	Disbursable	Auto-review if greater than the percentage permitted for the fiscal year.
	2015 – 16%		
	2016 – 14%		
	2017 – 12%		
	2018 and later – 10%		
BLI 1410-Administrative Costs	10% of grant authorized amount	Disbursable	Auto-review if greater than 10%

- A PHA can draw down from the Management Improvements (BLI 1408) and Administrative Costs (BLI 1410) budget line items immediately.

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- The Field Office will be able to immediately spread funds to Reserved Budget (BLI 0100) for all PHAs with an approved 5-Year Action Plan, and an approved Environmental Review.
- Environmental Review. Additional funding requests are subject to the completion of Environmental Review prior to the PHA's commitment (i.e., obligation) of funds and expenditures of funds. Environmental Review procedures are more specifically discussed in Section 6.2 of this Guidebook.
- Site-Specific Planning Activities. Architectural and engineering work, planning and costs for conducting environmental review and other line items (including many items under BLI 1430) can be funded prior to completion of a full Environmental Review or Environmental Assessment. Even under these circumstances, the PHA will still need to submit all required documents to the Responsible Entity, including documentation of any exemptions or categorical exclusions, as applicable. See 24 CFR §§50.19(a) and 58.35(b) for specific details.
- Activities Already Cleared. The Field Office can review a PHA's request for release of Capital Funds for the current year based on a 5-Year Action Plan even though all items may not be part of a completed Environmental Review, *so long as* all activities or work items related to the current request are part of a completed Environmental Review.
- Other Activities. As with all Capital Fund expenditures, including expenditure of funds from any other budget line item, a PHA must complete all necessary Environmental Reviews before the PHA submits draw request documentation to the Field Office for review.

3.11. Initial Disbursement of Capital Funds.

A PHA may requisition Capital Funds from HUD only when such funds are due and payable, unless HUD approves another payment schedule as authorized by 2 CFR Part 200, Subpart D.

Once it has determined that the Environmental Review is complete, the Field Office will review the submitted documentation to support the expenditure and will approve or reject the request based on the documentation.

If the requested documentation is approved, then the Field Office will update the appropriate budget line item authorizations for the amount of the requested expenditure.

The Field Office must notify the PHA in writing of the approval or rejection of the request. If the request is approved, the Field Office updates the authorization and the PHA can voucher for the expense supported by the documentation.

Once the PHA submits its voucher for initial disbursement and the Capital Funds are drawn down via LOCCS, the PHA should properly expend the funds within 3 business days. Following this initial disbursement, the PHA must then show reasonable progress through increased expenditures at a rate which would allow completion of the Capital Fund activity(ies) within the timeframe set forth in the progress schedule for the specific work items. The requirements for the Obligation and Expenditure of Capital Funds is further described in Chapter 7 of this Guidebook.

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3.12. Moving to Work (MTW) PHAs.

Each MTW PHA has entered into an MTW Agreement with HUD, which includes a set of attachments, some of which vary among PHAs.

The MTW Agreement establishes planning, annual submission, and distribution of funds requirements for MTW PHAs that differ in some respects from those for non-MTW PHAs, as described below.

In place of a PHA's 5-Year Plan and Annual Plan, an MTW PHA submits an Annual MTW Plan and also an Annual MTW Report, the timing and contents of which are established by the MTW Agreement.

Planning – PNA and Energy Audit. MTW PHAs are to comply with the PNA and Energy Audit requirements described above in Sections 3.2 and 3.3.

Planning – Public Process. In place of the requirements described above in Section 3.4, MTW PHAs are to follow the requirements of the MTW Agreement, which require a public hearing, consideration of comments, and PHA Board approval.

Planning – Pre-Submission Details. With respect to the provisions of Section 3.5 above, MTW PHAs are subject to the requirements, as further described in Section 3.5, regarding certification of IMS/PIC data, maintenance of an active DUNS Number, and rejection of a Capital Fund grant. In place of the Board resolution requirement described in Section 3.5.C, MTW PHAs are to submit Board resolutions in accordance with the MTW Agreement and other HUD MTW guidance.

Capital Fund Submission. In place of the Capital Fund Submission described above in this chapter, MTW PHAs are to submit the Capital Fund submissions as part of the Annual MTW Plan annually, in accordance with the MTW Agreement.

- In the CFP Final Rule, HUD decoupled the Capital Fund submissions from the PHA 5-Year and Annual Plans for non-MTW PHAs. However, for MTW PHAs, the Capital Fund submissions, as described below, remain part of the Annual MTW Plan, with the exception of the ACC Amendment(s) as described in the paragraph below.

- Even though the Capital Fund submissions are not decoupled from the Annual MTW Plan, an MTW PHA will submit its ACC Amendment for the Capital Fund formula grant and its ACC Amendments for First Increment RHF and Second Increment RHF Grants on the same schedule as non-MTW PHAs.

- The format and contents of the Capital Fund submissions for an MTW PHA are established by Attachment B to the Amended and Restated Moving to Work Agreement (currently Form HUD-50900).

- The information relating to the Capital Fund Program in an Annual MTW Plan is included with all other information on the PHA's operations and activities under its MTW program for the coming year. An Annual MTW Plan must contain the following information related to the Capital Fund Program (references are to Form HUD-50900):

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- *Housing Stock Information* – General Description of All Planned Capital Fund Expenditures During the Plan Year by Development. Form HUD-50900 requests only a general description of Capital Fund expenditures. Section II.A.
- *Example*: Assume a PHA is planning capital work on elevators but decisions at the development or building level have not been made about which elevators will be renovated first. In its Annual MTW Plan, the PHA can state that it intends to do elevator upgrades in portions of its portfolio and list all of the applicable projects or AMP numbers. In its later MTW Report submission, the PHA can specify which developments received the upgrades.
- *Plan Sources and Uses of MTW Funds* –FDS Line Item 70610, Capital Grants. Section V.1.
- *CFP Budget and P&E Report* or subsequent form required by HUD for MTW and non-MTW Capital Fund grants for each grant that has unexpended amounts, including estimates for the Plan Year and all three parts of the report. Under Form HUD-50900, MTW PHAs:
- Must provide Annual P&E Reports for active MTW and non-MTW Capital Fund grants. There is no separate MTW form.
- List its Capital Funds under the MTW budget line item (BLI 1492) if the funds are being used in non-Capital Fund purposes under the Fungibility (single fund budget) provisions of the Standard MTW Agreement. Section VI. Administrative, Item D.
- *Certifications of Compliance*. All certifications required for an MTW PHA's Capital Fund submissions are made as part of the Certifications of Compliance required by Attachment B (Form HUD-50900) to the Standard MTW Agreement.

- Plan Submission and Approval. An Annual MTW Plan is approved by Headquarters in consultation with the Field Office.
- Plan Amendments. Section V.B of the MTW Agreement states the requirements and procedures for amending an Annual MTW Plan. Amendments to the Annual MTW Plan only need to be made if the proposed MTW activity falls outside the scope of the HUD-approved Annual MTW Plan.
- Separate Approvals.Approval of the Annual MTW Plan does not constitute approvals that are required separately, such as environmental review, public housing development, and placement of Security Interests (when HUD approval is required).

Spreading Capital Fund Grants into LOCCs. Once an MTW PHA's Annual MTW Plan is approved and the PHA submits its executed ACC(s), HUD will distribute a Capital Fund grant to the PHA. The Field Office will spread the funds in LOCCs in the same manner as for non-MTW PHAs. *Note:* Most PHAs will use the single MTW budget line item (BLI 1492), as described above.

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Disbursement of Capital Funds. As with other PHAs, an MTW PHA may requisition Capital Funds from HUD only when such funds are due and payable, unless HUD approves another payment schedule. *Note:* Under MTW block grant authority, an MTW PHA may draw down and use its Capital Funds for a much broader range of activities than a non-MTW PHA. However, under the MTW Agreement, an MTW PHA may not accelerate drawdowns of funds in order to fund reserves.

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Exhibit 3.1. Capital Fund Submission: PHAs other than MTW PHAs

ACC Amendments: Three originals, signed and dated	**Yes**	**N/A**
ACC Amendment for Capital Fund formula grant		
ACC Amendment for First Increment RHF Grant		
ACC Amendment for Second Increment RHF Grant		
CFP Budget and Capital Fund 5-Year Action Plan	**Yes**	**N/A**
CFP Budget (Form HUD-50075.1 (Parts I and II))		
5-Year Action Plan (fixed or rolling) (Form HUD-50075.2)		
P&E Report (Form HUD-50075.1), if troubled or not in compliance with 24 CFR §905.306		
Statement of Significant Amendment		
Certifications	**Yes**	**N/A**
Lobbying Form – SFLLL		
Certification of Compliance w/Public Hearing: (copy of one of the following) Non-Qualified PHAs - Form HUD-50077 (1) 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.		
Certification of Payments to Influence Federal Transactions (Form HUD-50071)		
Civil Rights Certification (copy of one of the following) (1) Non-Qualified PHAs - Form HUD-50077 (2) Qualified PHAs - Form HUD-50077-CR		
Other	**Yes**	**N/A**
Recommendations made by the RAB(s) and a description of how the PHA will address the recommendations (if applicable)		
Board Resolution approving 5-Year Action Plan (if PHA is troubled)		
Environmental Review		
Not submitted, but on file at the PHA	**Yes**	**N/A**
Evidence of Completion of Environmental Review for proposed activities		
Physical Needs Assessment (PNA)		
Energy Audit (every 5 years)		

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Exhibit 3.2. Capital Fund Submission: MTW PHAs

ACC Amendments: Three originals, signed and dated	**Yes**	**N/A**
ACC Amendment for Capital Fund formula grant		
ACC Amendment for First Increment RHF Grant		
ACC Amendment for Second Increment RHF Grant		
Field Review of Approved Annual MTW Plan (Form HUD-50900)	**Yes**	**N/A**
General Description of all planned Capital Fund expenditures during the plan year, by development. Section II(A).		
Plan Sources & Uses of Funds, Section V(1)		
P&E Reports (Form HUD-50075.1), if troubled or not in compliance with 24 CFR §905.306		
CFP Budget (Form HUD-50075.1 (Parts I and II))		
Certifications of Compliance, Paragraph 3		

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Chapter 4. Capital Fund Formula Calculation

Capital Fund grants are allocated to the PHAs in accordance with the Capital Fund formula, which measures the existing modernization needs and accrual needs of PHAs in order to determine a relative formula share for each eligible PHA. One-half of the available Capital Funds in a given year are allocated based on relative existing modernization needs and the other half are allocated based on relative accrual needs. Modernization needs (also known as backlog needs) are existing capital improvement needs of a PHA's public housing. Accrual needs are the level of additional capital improvement needs that are expected to arise at a PHA's public housing projects in each successive year based on the age of each project and other factors.

HUD bases the formula calculation on data submitted by PHAs in the Inventory Management System/Public Housing Information Center (IMS/PIC) system; therefore, PHAs must annually verify and certify to information relating to units (known as the IMS/PIC Certification Process). The Capital Fund formula also includes calculation for RHF and DDTF, which provide funding to PHAs that have removed public housing units from their inventories through demolition or disposition, to partially offset the subsequent reduction in the formula unit count for the Capital Fund formula calculation, and those programs are further described in Chapter 5.

4.1. PIC/IMS Certification

The most important factors in determining a PHA's formula share are the number and type of public housing units in its inventory. PHAs are responsible for ensuring that the information reported in IMS/PIC is accurate, including the number of public housing units in each building, the number of buildings, the bedroom distribution of the units, and the household type for each unit. HUD annually sets deadlines by which PHAs must report data in IMS/PIC and certify to the data provided. If the PHA determines that data in IMS/PIC are correct, it shall provide a certification of the accuracy of the data reported in IMS/PIC in the form required by HUD and in advance of the deadline date imposed by HUD.

If the PHA determines that the IMS/PIC data are incorrect, it can either correct the information itself or work with the applicable Field Office to resolve discrepancies. If the PHA and Field Office cannot resolve discrepancies, the PHA should "submit a ticket" to HUD's Real Estate Assessment Center, Technical Assistance Center. If the discrepancy is not resolved by the deadline to submit a certification of units, the PHA shall reject the certification and provide a justification in IMS/PIC. If the issue is not resolved prior to the Capital Fund formula run date, the grant may be placed in pending status until resolved.

The Capital Fund Data Certification Step-by-Step Instruction Guide, located at Appendix 3, offers detailed instructions for PHAs with respect to reviewing the existing IMS/PIC data, correcting any incorrect data, and certifying to the accuracy of the data. PHAs and Field Offices should refer to both the issued guidance and the Capital Fund Data Certification Instruction Guide for further guidance.

4.2. Unit Count for Formula Calculation

1. For purposes of determining the number of a PHA's public housing units and the relative modernization needs of PHAs HUD shall count as one unit:

    - Each public housing unit and Section 23 bond-financed Capital Fund unit,

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    - Each existing unit under the Turnkey III program shall count as one-fourth of a unit
    - Units receiving Operating Fund Assistance only shall not be counted
  - And each existing unit under the Mutual Help program.

2. HUD will increase the unit count to reflect any units that the PHA adds to its inventory while the units are under CF ACC Amendment and have reached DOFA by the date that HUD establishes for the Federal Fiscal Year in which the Capital Fund formula is being run (Reporting Date). The DOFA must be entered into PIC. New Capital Fund units and those units reaching DOFA after the reporting date will be counted in the Capital Fund formula calculation for the following Federal Fiscal Year.

3. Reconfiguration is altering the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units). It causes the PHA's formula share to be calculated based on the count of existing units after the reconfiguration. To base the calculation on the count before reconfiguration would provide Capital Funds for the modernization needs or administrative costs of units that would no longer exist as a result of conversion.

4. For a Project losing units as a result of demolition and disposition, the number of units on which the Capital Fund formula is based will 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 from the PHA's inventory due to demolition and disposition, as further described in Chapter 5.

4.3. Computation of Formula Shares

1. The total estimated existing modernization need of a PHA under the Capital Fund formula is the result of multiplying the PHA's total number of formula units for each project by its estimated existing modernization need per unit, and calculating the sum of these estimated project needs.

2. The total accrual need of a PHA under the Capital Fund formula is the result of multiplying for each Project the PHA's total number of formula units by its estimated accrual need per unit, and calculating the sum of these estimated accrual needs.

3. A PHA's formula share of existing modernization need under the Capital Fund formula is the PHA's total estimated existing modernization need divided by the total existing modernization need of all PHAs.

4. A PHA's formula share of accrual need under the Capital Fund formula is the PHA's total estimated accrual need divided by the total existing accrual need of all PHAs.

5. A PHA's formula share of capital need under the Capital Fund 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%).

TRAINING

4.4. Faircloth Limit

HUD cannot provide Capital Funds above the unit limits mandated by the Faircloth Amendment, discussed further in Chapter 9 of this Guidebook. HUD maintains a publicly available list of the unit limits broken down by PHA, which is available at the HUD Office of Capital Improvements website. If a PHA determines its unit limit is not correct, it should contact the Field Office, who will work in conjunction with Headquarters, to correct the limit. If the issue is not resolved prior to the CFF run date, the grant will be placed in pending status until resolved.

4.5. High Performer Bonus

A PHA that is designated a high performer under the PHA's most recent final PHAS score may receive a performance bonus that is 5% above its base formula amount. In order to determine which PHAs qualify for the bonus, HUD issues a list of high-performing PHAs according to PHAS designations for the applicable Federal Fiscal Year. PHAs then review the list and resolve any discrepancies with HUD's Real Estate Assessment Center. PHAs must resolve the discrepancy with HUD's Real Estate Assessment Center within the timeframe announced by HUD guidance.

This bonus pool is partially funded with the Capital Funds that Headquarters has recaptured from PHAs that have failed to comply with the Obligation End Date and Expenditure End Date requirements, as further described in Chapter 7. The failure to comply with these requirements can also make a PHA ineligible for the bonus as its failure to comply can negatively affect its PHAS score. The bonus pool may also reduce the formula share available to non-high performer PHAs. However, the performance bonus requires that no PHA will lose more than 5% of its base formula amount as a result of the redistribution of funding from non-high performers to high performers.

TRAINING

Chapter 5. Replacement Housing Factor Grants and Demolition and Disposition Transitional Funding

5.1. Replacement Housing Factor Grants (RHF)

RHF grants were established in FY 2000 to provide PHAs that reduced their unit counts though a HUD-approved demolition or disposition with funding to build replacement units. RHF grants were only allowed to be used for development or acquisition of public housing units to replace the units lost though the HUD-approved demolition or disposition. The amount of the RHF grant does not relate to the cost of the replacement units, but instead only reflects the PHA's Capital Fund formula allocation for the units removed from the PHA's inventory with HUD approval. PHAs could receive RHF grants for up to 10 years. PHAs automatically received five years of RHF funding, known as First Increment RHF grants, the *year* after units approved for demolition or disposition were removed from the public housing inventory and the PHA reported the removal in PIC. In addition, if the PHA met certain criteria, it could apply for and HUD could approve a second, 5-year increment of RHF grants known as second increment RHF grants. RHF grants are awarded to PHAs as a separate Capital Fund grant and are calculated based on the units removed from its inventory through a HUD-approved demolition or disposition application. RHF funds may only be used to develop new public housing units. A PHA is eligible for an automatic First Increment RHF grant for public housing units removed from its inventory through demolition or disposition on or before June 30, 2013.

1st Increment RHF Eligibility A PHA was automatically eligible for a First Increment RHF grant if it met the following requirements:	**2nd Increment RHF Eligibility** A PHA was eligible to receive Second Increment RHF if it continued to meet the requirements for First Increment Eligibility and additionally met the following leveraging requirements:
PHA reported in IMS/PIC the removal of units from inventory due to HUD approved demolition or disposition	A commitment of funds (other than public housing funds), for replacement housing
The PHA has not received funding for public housing units that will replace the lost units from Disposition Proceeds, or under Public Housing Development, HOPE VI, Choice Neighborhoods Initiative, or programs that otherwise provide for replacement with public housing units	Project-by-Project basis. For example, the PHA cannot count leverage requirement at Development A towards the leverage requirement at Development B
The PHA is not troubled	Leverage generated for a First Increment RHF grant counts only if such funds are used in the same development as the Second Increment RHF grant.

RHF Eligible and Ineligible Uses. A PHA may only use RHF funds to develop or acquire additional public housing units in accordance with 24 CFR §905, Subpart F. Development of the replacement housing must be undertaken in accordance with Public Housing Requirements and the provisions of Chapter 9 of this Guidebook, which sets forth those requirements particular to the development of public housing units with Capital Funds.

TRAINING

Eligible Uses for RHF Grants	Ineligible Uses for RHF Grants
Development Activities, including but not limited to:	**Non-development Activities, including but not limited to:**
Acquisition of units that meet Uniform Physical Condition Standards (UPCS) at the time of acquisition	Modernization of public housing units
Acquisition with rehabilitation of non-public housing units that do not meet UPCS at the time of acquisition, but will be brought into compliance with UPCS and will be brought under the ACC	Demolition of public housing units unless the PHA plans to rebuild public housing units on the same site
Construction of new public housing units through Conventional Development or Mixed-Finance Development	Development of homeownership units
Infrastructure. Costs related to site work, grading, on-site infrastructure, and off-site infrastructure are eligible	Management Improvements (BLI 1408)
Administrative Costs. A maximum of 3%, of the total project budget, or, with HUD's approval, up to 6% of the total project budget (BLI 1410).	Transfer to Operations (BLI 1406
	CFFP financing to carry out non-development activities

Accumulation. RHF grants are calculated based on the formula share of the units removed from inventory, and are not based on the cost of developing replacement units. As a result of this calculation, a single RHF grant may not provide enough funding to develop replacement units. A PHA may accumulate up to 5 years of RHF grants until it has enough funding to develop replacement units, although other financing in addition to the accumulated RHF funds is typically necessary. Accumulation extends the obligation and expenditure periods of each RHF grant year to the Obligation End Date (OED) and Expenditure End Date (EED) of the final RHF grant in the accumulation. A PHA cannot accumulate First Increment RHF funds with Second Increment RHF funds. A PHA may choose to accumulate less than 5 years of funding. A PHA must submit an RHF Plan in order to request accumulation of grants.

TRAINING

5.2. RHF Planning Requirements

- PHAs must include use of RHF grants in the 5-Year Action Plan.
- If a PHA wishes to accumulate First Increment RHF grants, it must submit a First Increment RHF Plan.
- All PHAs requesting a Second Increment of RHF grants must submit a Second Increment RHF Plan.

Field Office approval of an RHF Plan constitutes approval to accumulate funds. Without an RHF plan, the PHA has no authority to accumulate funding. PHAs are encouraged to use the model RHF Plan found at Exhibit 5.2 at the end of this chapter.

First Increment RHF Plan Requirements An RHF plan is required for First Increment RHF only if the PHA intends to accumulate the funds. No plan is required if the PHA does not intend to accumulate funds. *PHAs are encouraged to use the model RHF Plan found at Exhibit 5.2 at the end of this chapter.*The First Increment RHF plan for accumulation must include the following:

- A statement of the PHA's intention to accumulate its First Increment RHF grants;
- The grant numbers and amounts of grants to be accumulated; and
- A statement that the PHA intends to use the RHF funds to develop public housing units.

The Field Office should review all RHF Plans to ensure that the PHA has: (1) requested accumulation, (2) identified the grant numbers and grant amounts, and (3) attested that the funds will be used for the development of additional public housing units.

If the Field Office determines that the RHF Plan does not comply with the requirements of this section, it shall notify the PHA promptly in writing. The PHA may work with the Field Office to correct deficiencies.

If the Field Office determines that the RHF Plan complies with the requirements of this section, it shall notify the PHA promptly in writing and enter the revised obligation and expenditure end dates into LOCCS.

Second Increment RHF Plan Requirements

Submission of a Second Increment RHF Plan shall include:

- Items required in a First Increment RHF Plan, and
- Confirmation that the PHA will obtain leverage for the total of the 5 years of RHF second increment grants.
- PHAs are encouraged to use the model RHF Plan found at Exhibit 5.2 at the end of this chapter.

The Field Office will review the application to determine that the PHA has: (1) requested accumulation, (2) identified the grant numbers and grant amounts, (3) attested that the funds will be used for the development of additional public housing ACC units, and (4) confirmed that it will provide leverage for the total 5 years of Second Increment RHF.

TRAINING

If the Field Office determines that the RHF Plan does not demonstrate compliance with the leverage requirement, it will issue an approval contingent upon securing the required leverage.

The Field Office will not allow drawdown of Second Increment RHF grants until the PHA demonstrates leverage.

Amending an Approved RHF Plan (Either Increment). At any time, a PHA may submit a proposed revision to an RHF Plan for either increment, along with supporting documentation, to the Field Office. Supporting documentation should include any required revisions to the 5-Year Action Plan.

If the Field Office determines that the proposed revision does not comply with the requirements of this chapter, it shall reject the proposed revision in writing.

If the Field Office determines that the proposed revision is valid but requires additional support or documentation, it shall identify the required information in writing to the PHA. The PHA may work with the Field Office to provide the requested information.

Once the Field Office determines that the proposed revision is acceptable, it shall issue a written approval to the PHA. In addition, it shall make any changes in IMS/PIC indicated by the revision, such as changes to the OED or EED.

In reviewing RHF Plans, Field Offices should ensure that the submitted RHF Plan is consistent with the PHA's 5-Year Action Plan, as applicable. Upon approval of the RHF Plan, the Field Office should keep the plan on file for the duration of the accumulation. A PHA may choose to request HUD approval for an "accumulation" of RHF funds.

When HUD approves a PHA's request to accumulate RHF grants, the Field Office will set the OED and EED for all the RHF grants in the accumulation at the dates that HUD would set for the most recent grant in the accumulation if that grant were a stand-alone grant (i.e., 24 and 48 months from the obligation start date of that grant).

In order to include a grant within an accumulation of grants, a PHA must submit its request at least 90 days prior to the obligation end date (set at 24 months from the obligation start date of that grant) of the oldest grant in the proposed accumulation. [24 CFR §905.400(i)(7)]

The approval of an RHF plan does not constitute approval to begin building, acquiring, or otherwise developing replacement public housing units. PHAs must follow the separate development approval process in Chapter 9 to obtain the required development approval.

5.3. Obligation End Date and Expenditure End Date Requirements for RHF Grants

The OED and EED for RHF grants are automatically set at 24 months and 48 months, respectively, from the obligation start date. RHF grants in an approved accumulation will have an OED and EED 24 and 48 months from the obligation start date of the last grant included in the accumulation.

TRAINING

If a PHA fails to obligate 90% of an RHF grant by the applicable OED, HUD will recapture the unobligated portion of the grant, and will send an amended ACC to the PHA to recapture the portion of the grant that the PHA failed to obligate by the OED.

If a PHA fails to expend 100% of an RHF grant by the applicable EED, HUD will recapture the undisbursed portion of the grant and will send an amended ACC to the PHA covering that portion of the grant that the PHA disbursed by the deadline.

If a PHA misses the OED or EED, Headquarters will notify the Field Office and send a letter to the PHA providing notice that the PHA is in violation of the applicable deadline. The letter will give the PHA the opportunity to provide documentation that it did in fact obligate or expend by the applicable deadline. If the PHA fails to provide adequate documentation, Headquarters will notify the PHA that HUD is recapturing the unobligated balance and will provide an amended ACC to reflect the recapture.

The process for extending the OED or EED for an RHF grant (other than through accumulation) is handled in the same manner as a Capital Fund formula grant, as further described in Chapter 7.

Monthly Reporting on OED/EED Status. PHAs that receive RHF grants must submit monthly reports in LOCCS regarding the obligation and expenditure of the funds. Reports are due within 5 business days of the final day of the previous month. PHAs must submit a report in LOCCS within 5 business days of the OED. This usually means that PHAs must submit two reports in LOCCS during the month when the OED occurs.

RHF Grant Closeout. The closeout procedure for RHF grants is described in Chapter 7 of this Guidebook.

5.4. Rejection of RHF Grants

A PHA automatically receives 5 years of First Increment RHF funding for the Federal Fiscal Year after the PHA enters the demolition or disposition of the units in IMS/PIC, provided that all eligibility requirements are met.

If a PHA does not wish to receive RHF funding, it must reject the First Increment RHF grant by sending a written statement of rejection to the Field Office every Federal Fiscal Year that it does not wish to accept the funds. The Field Office should promptly transmit the PHA's statement of rejection to Headquarters.

5.5. DDTF

When the Capital Fund Final Rule was published, it replaced RHF grants with Demolition and Disposition Transitional Funding (DDTF) for public housing units removed from a PHA's inventory on or after July 1, 2013. In contrast to the RHF grant, DDTF is included in the PHA's annual Capital Fund formula grant, and is not given as a separate grant. Since it is included in the annual formula grant, DDTF can be used for any eligible activity under the Capital Fund Program including development of replacement units or modernization. PHAs that remove units from inventory due to HUD-approved demolition or disposition are eligible to up to 5 years of DDTF. (*Note: For MTW PHAs, the use of RHF and DDTF funds may be affected by the PHA's MTW Agreement with HUD.)*

TRAINING

A PHA's DDTF allocation is calculated in the same manner as RHF funds. However, DDTF is not given as a separate grant, and is added directly to the PHA's annual Capital Fund formula grant. PHAs may use DDTF for any eligible activities under the Capital Fund Program.

There is no separate planning requirement for DDTF. The PHA must include any activities to be funded with DDTF in its 5-Year Action Plan as part of the activities to be funded with the overall Capital Fund formula grant.

The PHA obligates and expends DDTF as part of and in the same manner as the overall Capital Fund formula grant. As such, there will not be a separate determination of compliance with DDTF.

(Note: A PHA will automatically receive DDTF for removed units as part of its next annual Capital Fund formula grant following the IMS/PIC entry unless the PHA rejects DDTF for that Federal Fiscal Year by sending a written statement of rejection to the Field Office. [24 CFR §905.400(j)(4)(i)])

Comparison of RHF to DDTF		
	RHF	**DDTF**
Accumulation	Yes	No. Same obligation and expenditure requirements as the Capital Fund formula grant
Eligible Activities	Development of replacement public housing units	Any Capital Fund eligible activity
Funding Delivery	Stand-alone RHF grant each year; separate ACC Amendments	Included in the PHA's annual Capital Fund formula grant
Years of Funding	5 or 10	5

5.6. Transition from RHF to DDTF

Units demolished or disposed of after June 30, 2013, are eligible for 5 years of DDTF. The Capital Fund Final Rule provides a transition from RHF grant to DDTF to allow PHAs that were already receiving RHF grants in FY 2013 for units removed from inventory in FY 2012 or prior, to receive up to 10 years of funding for those units. See Exhibit 5.1 for a detailed chart of the RHF transition.

If in FY 2014, a PHA is scheduled to receive year 2, 3, 4 or 5 of First Increment RHF (for units removed from inventory prior to June 30, 2012), it will receive the remaining years of First Increment RHF and an additional 5 years of DDTF to replace 5 years of Second Increment grants. Note that the PHA does not need to meet the leverage requirements of Second Increment RHF grants to receive the 5 years of DDTF after its First Increment RHF.

If in FY 2014, a PHA is scheduled to receive year 6, 7, 8, 9 or 10 of Second Increment RHF (for units removed from inventory prior to June 30, 2012), it will receive the remaining years of the Second Increment RHF.

TRAINING

If a PHA has units that were removed from IMS/PIC for the first time in FFY 2013, and did not previously receive First Increment RHF or Second Increment RHF, the PHA will only receive DDTF for 5 years. It will not receive any RHF funds.

Following is a chart that summarizes PHAs' status in FFY 2014 and eligibility for RHF or DDTF funds. A detailed year-by-year chart is found at Exhibit 5.1 at the end of this chapter.

Summary of RHF to DDTF Transition		
Status	**Applicable RHF Funds**	**Applicable DDTF Funds**
PHAs that removed units on or after July 1, 2013	None	5 Years
PHAs that received Years 1-4 of First Increment RHF funding in FFY 2013	For the remaining years of the First Increment RHF grants	5 Years (if eligible for Second Increment RHF grants)
PHAs that received Years 6-9 of Second Increment RHF funding in FFY 2013	For the remaining years of the Second Increment RHF grants	None

5.7. Determining Demolition or Disposition Date

A PHA enters the actual dates of disposition or demolition into the IMS/PIC system. The date of IMS/PIC entry (as approved by the Field Office) is used in calculating eligibility for RHF and DDTF.

Demolition - Use date of final payment to demolition contractor.

Disposition - Use date of the deed or ground lease transferring the property.

June 30 is the Reporting Date, the deadline for the annual calculation of the Capital Funding formula grant, including DDTF and RHF grants. PHAs that report the removal of units prior to June 30 will be eligible for DDTF or RHF funds, as applicable, in the following Federal Fiscal Year.

TRAINING

Exhibit 5.1. Detailed Description of RHF to DDTF Transition

	Detailed Description of RHF to DDTF Transition									
		FFY 2014	FFY 2015	FFY 2016	FFY 2017	FFY 2018	FFY 2019	FFY 2020	FFY 2021	FFY 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*	DDTF*	DDTF*	DDTF*	DDTF*
	Year 3	Year 3 of 1st Incr RHF	Year 4 of 1st Incr RHF	Year 5 of 1st Incr RHF	DDTF*	DDTF*	DDTF*	DDTF*	DDTF*	
	Year 4	Year 4 of 1st Incr RHF	Year 5 of 1st Incr RHF	DDTF*	DDTF*	DDTF*	DDTF*	DDTF*		
	Year 5	Year 5 of 1st Incr RHF	DDTF*	DDTF*	DDTF*	DDTF*	DDTF*			
	Year 6	DDTF	DDTF	DDTF	DDTF	DDTF				
	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								

*Replaces what would have been a First or Second RHF Increment under the previous regulation.

TRAINING

Exhibit 5.2. Model RHF Plan

[date]

Director, Public Housing Division

HUD Field Office

456 Smith Street

Anyplace, BR 12345-6789

Subject: First Increment RHF Plan - Accumulation of First Increment RHF Funds

(Second Increment RHF Plan - Use and Accumulation of Second Increment RHF Funds)

Dear HUD Public Housing Director:

The Anyplace Housing Authority (AHA) would like to accumulate five years of first (second) increment Replacement Housing Factor (RHF) grants, totaling approximately $1,225,000 to acquire an existing multi-family building in the southwest section of town. AHA needs to accumulate the grants in order to have sufficient funds to purchase and renovate units.

The subject grants are:

BR36R001501-05: $240,000

BR36R001501-06: $250,000

BR36R001501-07: $245,000 (estimated)

BR36R001501-08: $245,000 (estimated)

BR36R001501-09: $245,000 (estimated)

It is our understanding from the information posted on the Capital Fund webpage that the obligation end date for these funds will be xx/xx/xxxx. The PHA will acquire/develop units in accordance with the requirements found at 24 CFR Part 905, Subpart F and will meet the newly established obligation and expenditure deadlines.

[For Second Increment RHF Grants Only:

The Housing Authority confirms that its Capital Fund Program Budget has been approved by HUD on xx/xx/xxxx. The Housing Authority also confirms that its 5-Year Action Plan was approved on xx/xx/xxxx.

AHA is in compliance with the obligation and expenditure deadlines on all of its Capital Fund grants and is current on its LOCCS reporting. AHA recognizes that in order to meet the leverage requirement, it must secure at least $402,000 in firm financial commitment(s). When the leveraged funds are secured, we will submit written documentation confirming the funding.]

If you have any questions, please contact Jane Jones, Director of Development and Planning, at xxx-xxx-xxxx.

Sincerely,

TRAINING

Chapter 6. General Program Requirements and Implementation

6.1. Overview

Capital Fund grants are federal funds appropriated by Congress and are subject to various other federal laws, regulations, executive orders, 2 CFR Part 200 (codifying OMB Circulars), and other requirements in addition to those expressly provided by the 1937 Act and the CFP Final Rule, often called Cross-Cutting Requirements. This chapter addresses compliance with these cross-cutting requirements. Compliance with such other requirements, where necessary, will involve reference to resource materials and consultation with staff outside of the Capital Fund Program. This chapter also addresses some regulatory requirements imposed by the 1937 Act.

6.2. Environmental Reviews

[Reserved]

6.3. Real Property Acquisition and Relocation

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). The URA is a Federal law that establishes minimum standards with respect to acquisitions of real property and relocation of persons resulting from the acquisition, rehabilitation, or demolition of real property for a federally-funded program or project. 49 CFR 24 is the government-wide regulation that implements the URA. HUD Handbook 1378-Tenant Assistance, Relocation, and Real Property Acquisition provides HUD policy and guidance on implementing the URA and 49 CFR 24 for HUD-funded programs and projects. Demolition or disposition under Section 18 of the 1937 Act is covered by the relocation provisions at 24 CFR §970.21, not the URA. However, if the demolition or disposition is part of a project involving Capital Funds or any additional HUD funds (other than Section 18 disposition proceeds), the URA will apply. PHAs are advised to begin planning URA compliance as soon as they begin planning any activity that will eventually require land acquisition or tenant relocation, either of existing public housing residents or residents of acquired properties.

Section 104(d) of the Housing and Community Development Act of 1974 (section 104(d)). Section 104(d) is a federal law that applies to Community Development Block Grant (CDBG), Home Investment Partnerships (HOME), and Urban Development Action Grant (UDAG) programs *(Note: UDAG is not an active program and no funds have been appropriated since 1998*). Section 104(d) relocation and one-for-one replacement housing requirements may apply when CDBG, HOME, or UDAG funds are used in connection with the demolition or conversion of lower-income dwelling units. 24 CFR Part 42 subpart C are the regulations that implement section 104(d). HUD Handbook 1378-Tenant Assistance, Relocation, and Real Property Acquisition, Chapter 7, provides HUD policy and guidance on implementing section 104(d) and 24 CFR Part 42 subpart C for CDBG, HOME, and UDAG-funded program and projects.

For additional information and resources for URA and section 104(d) matters, visit HUD's Real Estate Acquisition and Relocation website www.hud.gov/relocation. The website also includes contact information for HUD's Regional Relocation Specialists who are available to provide project-level assistance in their assigned geographic areas.

TRAINING

6.4. Wage Rates

Davis-Bacon Wage Rates. Except for non-routine maintenance work (defined below), for all work or contracts exceeding $2,000 in connection with development or modernization activities for a public housing project (regardless of source of funds), all laborers and mechanics employed in the construction, alteration, or repair work shall be paid not less than Davis-Bacon wage rates. HUD does not issue Davis-Bacon wage rates, which are instead available through the U.S. Department of Labor's Wage and Hour Division.

Development or modernization is defined as any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment in connection with a public housing project.

Demolition, by itself, is not considered subject to Davis-Bacon wage requirements. However, if subsequent construction at the site is planned as part of the same project that will involve Capital Funds, then the demolition work would be covered by Davis-Bacon wage requirements.

HUD-Determined Prevailing Wage Rates. For all operations work for a public housing project, including routine and non-routine maintenance work, all laborers and mechanics employed shall be paid not less than the wages prevailing in the locality, as determined or adopted by HUD. All architect, technical engineers, drafts people, and technicians employed at the public housing project shall also be paid such prevailing wages. HUD wage decisions may be obtained from HUD's Office of Labor Relations staff; these rates require a determination as to whether maintenance is routine or non-routine.

Routine maintenance involves the regular upkeep and preservation of buildings, grounds, and facilities. This may include groundskeeping, janitorial work, patching and/or finishing of interior and exterior walls and other surfaces, and the preservation, inspection, and general upkeep of electric, plumbing, and heating and air-conditioning systems.

Non-routine maintenance includes work items that ordinarily would be performed on a regular basis in the course of upkeep of a property but have become substantial in scope because they have been put off. Non-routine maintenance includes replacement of materials and equipment that have become unsatisfactory because of normal wear and tear with items of substantially the same kind of materials and equipment. However, reconstruction, substantial improvement in the quality or kind of materials and equipment that alters the nature of the type of housing is not non-routine maintenance, but is instead Modernization or Development subject to the Davis-Bacon requirements described above.

- **Exclusion from HUD-Determined Prevailing Wage Rates.** Contracts for certain professional services are excluded from coverage by HUD-determined prevailing wage rates. These exclusions include contracts for inspections or testing of equipment without repairs, warranty inspections, and service or maintenance of leased equipment, fixtures, or appliances.

State Wage Rates. State wage rates are preempted by federal wage rates in any public housing modernization or development project, as provided at 24 CFR §965.101.

Volunteers. The prevailing wage requirements of this section do not apply to volunteers performing development, modernization, or non-routine maintenance work under the conditions set out in 24 CFR Part 70.

TRAINING

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.

Wage Rate Reference Materials

Reference	Description
Labor Standards Handbook.	PHAs and Field Offices are encouraged to refer to HUD Handbook: Federal Labor Standards Requirements in HUD Programs (1344.1, REV-2, dated 2/2012) for requirements related to implementing, monitoring, and enforcing wage rate requirements.
PHA Procurement Handbook.	Davis-Bacon contracting requirements are applied to PHA construction and modernization contracts in Sections 10.1, 10.3, 10.5, 10.9, 10.10, and 10.11 of Procurement Handbook for Public Housing Agencies (7460.8, REV-2, dated 2/2007) (PHA Procurement Handbook).
Davis-Bacon Labor Standards.	A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects. (Jan. 2012) This plain-language guide to a general contractor's obligations in HUD-assisted construction projects is available from the HUD Office of Labor Relations website, and is a useful handout for contractors.
Making Davis-Bacon Work.	A Practical Guide for States, Indian Tribes, and Local Agencies. (Sept. 2011). This plain-language guide identifies a PHA's responsibilities as recipient of HUD funds and contractor to third party. It is available from the HUD Office of Labor Relations website.

The following table describes the PHA's responsibilities for wage rates:

TRAINING

PHA Responsibility	Description
Required Clauses and Wage Rates.	PHAs must incorporate the clauses contained in Form HUD-5370, General Conditions of the Contract for Construction, in construction contracts. PHAs are encouraged, but not required, to use the following HUD forms to pass along wage rate requirements accurately: Construction Contracts over $100,000. Form HUD-5370 "General Conditions of the Contract for Construction." Construction or Development Contracts between $2,000 and $100,000. HUD-5370-EZ "General Conditions of the Contract for Small Construction/Development Contracts."
Preconstruction Conference/ Technical Advice.	PHAs are encouraged, but not required, to hold a preconstruction conference at which wage rate responsibilities are discussed. PHAs are encouraged to provide basic training and technical support to contractors to ensure that they understand their obligations under prevailing wage and reporting requirements.
Designate Contract Administrator for construction	Provide contact to the appropriate HUD Office for Labor Relations (OLR).
Monitor compliance through wage surveys and interviews.	PHAs must conduct on-site inspections including interviews with laborers and mechanics employed on the construction project. The contract administrator or a designee (such as an agency construction inspector) must periodically conduct interviews with the construction workers on the job site. The purpose of the interviews is to capture observations of the work being performed and to get the workers' views on the number of hours they work, the type of work they perform, and the wages they receive. Information gathered during the interviews is recorded on Form HUD-11, Record of Employee Interview. Completed HUD-11s must be compared to the corresponding contractor and subcontractor certified payrolls to test and verify the accuracy of the payroll information. Form HUD-11s are available on-line in English and in Spanish in a fillable format via the HUD Forms website and at the OLR website.
	PHAs must ensure that the applicable Davis-Bacon wage decision and Department of Labor (DOL) Davis-Bacon poster (Form WH-1321) are displayed at the job site.
Certified Payroll.	PHAs must review weekly certified payroll reports (DOL Form WH-347 is optional but advised) and related documentation. PHAs must Identify any discrepancies and/or violations. PHAs must ensure any needed corrections are made promptly, including the payment of wage restitution, as needed, and the assessment and collection of liquidated damages, as appropriate.
Report to HUD.	PHAs must semi-annually file Form HUD-4710 identifying contracts awarded over the past 6 months and enforcement activity, regardless of contract date, over the past 6 months.
	PHAs must refer potential criminal or complex enforcement actions to HUD, in addition to Contract Work Hours and Safety Standards Act liquidated damages assessments for overtime violations and debarment recommendations.

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6.5. Procurement and Contract Requirements

When procuring properties or services using Capital Funds, PHAs must comply with 2 CFR §200.317 to §200.326, and HUD implementing instructions, except as provided in HUD regulations at 24 CFR Part 905 discussed herein. PHAs must also follow their own procurement policies and procedures.

All procurement transactions should be conducted in a manner that provides, to the maximum extent practical, full and open competition, as required by 2 CFR §200.319. Examples of requirements that HUD considers restrictive of competition include the following:

- Placing unreasonable requirements on firms in order for them to qualify to do business with the PHA;
- Requiring unnecessary experience and excessive bonding;
- Making noncompetitive awards to consultants that are on retainer contracts;
- Specifying only a brand name product instead of allowing an equal product to be offered; and
- Imposing in-state or local geographic preferences unless expressly mandated or encouraged by federal statute.

PHAs must perform a cost or price analysis in connection with every procurement action. The method and degree of analysis depend on the facts of the particular procurement, but typically the analysis includes both an independent cost estimate and a price or cost analysis.

- **Independent Cost Estimate**. An independent cost estimate is required for all procurement actions in excess of the micro-purchase level (see 2 CFR 200.67 and 200.320)(not to exceed $3,000 or $2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act. This estimate is prepared before receiving bids or proposals, and serves as the PHA's benchmark for evaluating the reasonableness of the contractors' proposed costs or prices along with the cost guidelines in 2 CFR Part 200. It also facilitates the selection of the method of procurement.
- **Price Reasonableness.** In competitive procurements, the force of competition is usually adequate to allow the PHA to make a price reasonableness determination based simply on a comparison of the offered prices. Where the PHA cannot otherwise document price reasonableness through a price analysis, formal cost analysis must be used.
- **Force Account Labor.** While PHAs do not negotiate with a third party when determining to use their own labor force to perform a task (i.e., Force Account Labor), the PHA should still document the cost reasonableness of using its own labor rather than procuring these services through competitive procurement. In Force Account Labor, the PHA procures needed materials and equipment pursuant to 2 CFR Part 200. Additional discussion of Force Account Labor may be found in Section 6.5.

Method of Procurement. Most Capital Fund procurements will be accomplished by one of five basic procurement methods:

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Methods of Procurement	
Small Purchase.	These are relatively simple and informal procurement methods for securing services, supplies, or other property. The PHA should obtain price or rate quotes from an adequate number of qualified sources, typically at least three. The maximum amount (the simplified acquisition threshold) is $150,000 as of publication of this Guidebook. [2 CFR §200.88] (Note: If a PHA's procurement policy (e.g., if based on local or state law) sets a lower small purchase threshold, that threshold must be used.)
Micro Purchase.	Documentation should be kept to a minimum for micro purchases, and solicitation of one source only is permitted. The maximum amount (the micro purchase threshold) is $3,000 as of publication of this Guidebook. [2 CFR §200.67] (Note: If a PHA's procurement policy sets a lower small purchase threshold, that threshold should be used.)
Sealed Bids.	Sealed bids are used for most construction contracts that exceed the simplified acquisition threshold. Bids are publicly solicited and a firm fixed-price contract is awarded to the responsive and responsible bidder with the lowest bid.
Competitive Procedures.	Competitive procedures are used when conditions are not appropriate for the use of sealed bids, especially when price may not be the primary determining factor for contract award. Grantees may also use this approach for qualifications-based procurement of architectural/engineering professional services and for procurement of developers of mixed-finance developers, as discussed below.
Noncompetitive Procedures.	This method involves solicitation of a proposal from only one source, and may be used only when: The item is available only from a single source; the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or after solicitation is made to a number of sources, but competition is determined inadequate.

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Mixed-Finance Development Projects. Mixed-Finance Development Partners may be selected in accordance with the 24 CFR §905.604(h) (described in Chapter 9 of this Guidebook). Contracts and other agreements with Mixed-Finance Development Partners must specify that they comply with the requirements of 24 CFR §905.602 and §905.604 (described in Sections 9.5 and 9.6 of this Guidebook).

Mandatory Contract Clauses. PHAs shall incorporate all mandatory contract clauses required by HUD. PHAs may accomplish this by (1) attaching the applicable HUD form(s) and/or wage decisions, (2) incorporating the text of the applicable HUD document directly into the PHA's own contract documents,

and (3) incorporating the clauses or HUD forms and/or any applicable Davis-Bacon wage decisions by reference. When incorporating clauses or forms by reference, the reference must specify which clauses or forms are incorporated, and where the clauses or forms may be accessed. If a form is not prescribed, the PHA may use any Office of Management and Budget (OMB) approved HUD forms that contains all applicable federal requirements and contract clauses. Additional information on mandatory clauses may be found in Exhibits 6.1 and 6.2.

Assurances of Completion. Notwithstanding the bonding requirements described at 2 CFR §200.325, for each Capital Fund construction contract over $100,000, the contractor shall furnish the PHA with the following based on an exception to 24 CFR 85.36(h)(See the 2013 edition of 85.36(h) and HUD Conforming rule for 2 CFR Part 200):

- A bid guarantee from each bidder equivalent to 5% of the bid price; and
- At least one of the following:
    - A performance bond and payment bond for 100% of the contract price;
    - A performance bond and a payment bond, each for 50% or more of the contract price;
    - A 20% cash escrow;
    - A 10% irrevocable letter of credit with terms acceptable to HUD; or
    - Any other payment method acceptable to HUD.

Procurement of Recovered Materials. PHAs must give preference in their own procurement practices to materials on the U.S. Environmental Protection Agency's approved list in accordance with the requirements of Section 6002 of the Solid Waste Disposal Act. Among other things, these requirements apply 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. [2 CFR §200.322]

6.6. Force Account Labor.

Force account labor is labor employed directly by a PHA on either a permanent or temporary basis to carry out physical work funded by the Capital Fund. The PHA uses employees, either existing or newly hired, pursuant to its personnel policy to perform work, rather than procuring a contractor to perform certain activities. Any goods or services purchased in the course of the force account work must be procured in accordance with 2 CFR Part 200.

A PHA may use force account labor if the plan to do so is included in the PHA's 5-Year Action Plan that is approved by the PHA Board of Commissioners and HUD. HUD approval is not required to use force account labor when the PHA is designated as a high performer under PHAS.

In the annual budget included in the 5-Year Action Plan, force account labor costs shall be charged to the appropriate BLI. A carpenter working on a building frame would be allocated to Dwelling Structures (BLI 1460). Later when the carpenter is working on a community building, the costs would be allocated to Nondwelling Structures (BLI 1470).

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The Field Office should only approve use of Force Account Labor if it determines that:

- the use of force account labor is cost-effective and appropriate to the Capital Fund activities being undertaken (see cost benefit analysis section below);
- and the PHA has the capacity to serve as its own contractor.

The PHA shall use a cost benefit analysis to compare the overall benefits of hiring and administering its own labor force to procuring the work from an outside contractor. The extent and nature of the analysis should be commensurate with the scope of planned improvements.

- *Example*: For basic work items, it may be more cost effective to use the PHA's existing maintenance staff to undertake the repairs. However, for larger, more complicated rehabilitation, a PHA may consider procuring an A/E firm to oversee the work.

If the analysis determines that the use of force account labor is the most cost effective approach, the PHA should proceed with the force account work. Otherwise, the PHA should procure outside contractors to undertake the planned activities.

Davis-Bacon and prevailing wage determinations apply to employees conducting force account work just as they would apply to a general contractor's employees.

- *Example*: A journeyman licensed electrician employed by the PHA for development or modernization activities should be paid the same wage rate as a journeyman licensed electrician employed by a general contractor performing the same work.

At the beginning of the work, the PHA should obtain a wage determination just as it would for a third-party work force.

The employees' contracts or job descriptions should outline the labor skills required, licensing requirements, duration of the assignment, wages earned, fringe benefits.

Personnel Issues. A PHA may use existing employees or hire new employees pursuant to its personnel policy. New employees may be hired on a permanent or temporary basis.

Current PHA employees may become force account workers provided that:

- their regular duties are either suspended or reassigned;
- maintenance of the properties is not compromised; and
- employees' regular work assignments are not adversely affected.

As with all hiring, no hiring may violate the conflict of interest policies under the PHA's procurement policy, the ACC, or 2 CFR Part 200.

Equipment and Materials. All equipment, tools and materials used in force account work must be procured following the requirements outlined in Section 6.4 of this Guidebook. The purchase or lease of equipment (including vehicles and dump trucks) must be justified by the scope of work. Any dedicated or specialized equipment must be used or disposed of in accordance with 2 CFR §200.313. The cost and

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administration of all related equipment and materials must be clearly identified in the cost benefit analysis.

The obligation and expenditure requirements for Capital Funds used for force account work are described in Chapter 7 of this Guidebook.

Summary of Force Account Labor Requirements
PHAs must meet basic requirements related to their ability to staff, supervise and manage the proposed force account work.
PHAs must perform a cost benefit analysis for the proposed force account work.
HUD approval is required unless the PHA is a PHAS high performer.
Davis-Bacon wage and/or prevailing wage rates may apply.
Obligation and expenditure End Dates for the Capital Funds used for the force account work must be observed.

6.7. Contract Administration and Acceptance of Work

PHAs are responsible, in accordance with the procurement regulations at 2 CFR §200.317 to §200.326, for all contractual and administrative issues arising out of their procurements. PHAs shall maintain a contract administration system to ensure that each contractor fulfills all of the terms and conditions of each contract and shall maintain full and complete records on the history of each procurement transaction.

Inspection and Acceptance. PHAs, or, in the case of Mixed-Finance Development, 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, a 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. PHAs shall determine any hold back 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.

Guarantees and Warranties. PHAs, or, in the case of Mixed-Finance Development, 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. PHAs 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

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warranties. PHAs shall require repair or replacement of all defective items prior to the expiration of the guaranty or warranty periods.

Notification of Completion. The PHA, or, in the case of Mixed-Finance Development, 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.

6.8. Nondiscrimination and Equal Opportunity Requirements

Nondiscrimination and Equal Opportunity Administrative Requirements:

Capital improvements using Capital Fund are subject, generally, to nondiscrimination and equal opportunity requirements. The more extensive the improvements, the more requirements tend to apply. A partial outline of these requirements is as follows:

- **24 CFR § 960.103**: PHAs must administer public housing in accordance with the nondiscrimination and equal opportunity requirements imposed by contract or federal law, including the authorities cited in 24 CFR 5.105(a) (see below) and provisions to affirmatively further fair housing.
- **24 CFR § 5.105(a)** lists the federal laws and regulations that apply to HUD programs, including the activities of PHAs. They include, for example:
    - The Fair Housing Act and implementing regulations at 24 CFR Part 100;
    - Title VI of the Civil Rights Act of 1964 and implementing regulations at 24 CFR Part 1;
    - Age Discrimination Act of 1975 and implementing regulations at 24 CFR Part 146;
    - Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8; and
    - Title II of the Americans with Disabilities Act of 1990.

The following documents are also relevant in the context of non-discrimination and equal opportunity requirements:

> Plan Documents: PHAs submit a Five Year Agency Plan and Annual Plan Update (HUD-50075), required by Section 5A of the 1937 Act. Included with these plans must be a civil rights certification as specified in HUD's regulations at 24 CFR § 903.7(o): PHAs must certify annually that they will comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990, and will affirmatively further fair housing. PHAs that do not submit PHA Annual Plans must submit the civil rights certification.

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The Fair Housing Act

The Fair Housing Act is Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 – 3619), as amended in 1988, which prohibits discrimination against individuals because of race, color, religion, sex, disability, national origin, or familial status. The Fair Housing Act prohibits discrimination against protected class members in the sale, rental, conditions, and financing of dwellings and in other housing-related transactions. The Fair Housing Act and its implementing regulations at 24 CFR Part 100 define who is protected, what type of housing the law covers and what types of actions constitute illegal discrimination. 24 CFR Part 100 interprets the scope of the Fair Housing Act and similarly prohibits discrimination in the sale or rental of dwellings, the provision of services in connection with housing and the availability of residential real estate-related transactions.

Affirmatively Furthering Fair Housing

1. Purpose

Section 808(e) (5) of the Fair Housing Act (42 U.S.C. § 3608(e) (5)) requires the Secretary of HUD to administer housing and urban development programs and activities in a manner that affirmatively furthers fair housing. The requirements to affirmatively further fair housing apply to PHAs.

2. Obligations of PHAs to Affirmatively Further fair housing

PHAs must certify that they are affirmatively furthering fair housing in their Annual Plan. PHAs participating in the MTW demonstration submit this certification as a part of their Annual MTW Plan, referenced in Attachment B of the Standard MTW Agreement.

The specific certification requirements detailed at 24 CFR § 903.7(o) provide that a PHA is compliant in affirmatively furthering fair housing if the PHA fulfills section 903.2(b) and takes action to:

1. Examine programs or proposed programs;
2. Identify any impediments to fair housing choice within those programs;
3. Address those impediments in a reasonable fashion in view of the resources available;
4. Work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require PHA involvement; and
5. Maintain records reflecting these analyses and actions.

Section 24 CFR 903.2(d) reinforces the obligations among PHAs to follow Fair Housing Act requirements and affirmatively further fair housing in admission and occupancy policies; prevent discrimination against and/or segregation because of race, color, religion, sex, disability, familial status or national origin; reduce racial and national origin concentrations in the design of eligibility, selection and admissions policies; and take affirmative steps to overcome the effects of conditions which resulted in limited participation of persons because of their race, national origin, or other prohibited basis.

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Title VI of the Civil Rights Act of 1964

HUD's Title VI regulation states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from HUD (24 CFR § 1.1). All PHAs, including those that participate in the MTW demonstration, must fully comply with the non-discrimination provisions of Title VI and 24 CFR Part 1, which includes the prohibition on discrimination in providing accommodations, facilities, services, financial aid, and any other benefits provided by MTW PHAs (see 24 CFR §§ 1.1, 1.2).

PHA contracts must contain assurances that contractors comply with Title VI. Real property acquired through federal financial assistance must have a recorded covenant that assures nondiscrimination (24 CFR § 1.5).

24 CFR § 1.4(b)(6) provides that if a recipient of federal funds has previously discriminated against persons on the ground of race, color, or national origin, then the recipient must take affirmative action to overcome or correct the effects of prior discrimination in program administration. In the absence of such prior discrimination, a recipient of federal assistance should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin (24 CFR § 1.4(b)(6)(ii)).

HUD's Title VI regulations require PHAs to complete compliance reports. PHAs submit compliance reports to the appropriate field civil rights official in a timely, complete and accurate manner at such times as the civil rights official determines necessary. Reports include racial and ethnic data of the beneficiaries of federally-assisted programs. The responsible Department official or his designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with part 1. PHAs must not retaliate against a person who makes a complaint or assists in an investigation. Consequences for violations include informal resolution, termination of federal financial assistance, referral to the Department of Justice and the initiation of debarment proceedings (see 24 CFR §§ 1.6, 1.7, and 1.8).

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) prohibits discrimination based on disability in programs or activities operated by recipients of federal financial assistance, including PHAs. This coverage extends to all aspects of program administration and implementation by PHAs, as well as the actual housing owned or managed by PHAs.

Under Section 504, an individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment (24 CFR § 8.3). Generally, the determination is measured without consideration of the ameliorative effects of medicine or devices. Major life activities include, for example, taking care of oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working (See 24 CFR § 8.3 concerning the section 504 provisions for alcohol and drug abusers).

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Reasonable Accommodations

PHAs are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the housing unit, the common areas of a dwelling or participate in or access programs and activities conducted or sponsored by the PHA (see 24 CFR §§ 8.20, 8.21, 8.24 and 8.33). When a family member requires a policy modification to accommodate a disability, PHAs must make the policy modification unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. For example:

- A PHA that has a no pets policy must permit the use of an assistance animal as a reasonable accommodation if the animal is needed to provide the resident with a disability an equal opportunity to use and enjoy the housing;
- A PHA gives priority parking for a person with a mobility disability who requests an assigned parking spot.

The Americans with Disabilities Act

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability by public entities. Public entity means any state or local government; or any department, agency, special purpose district or other instrumentality of a state or states or local government, including a PHA. See 28 CFR 35.102 and 35.104. A public entity shall operate each service, program or activity so that when viewed in its entirety, each service, program or activity is readily accessible to and usable by individuals with disabilities (see 28 CFR § 35.151(a)).

The title II regulations at 28 CFR Part 35 contain extensive requirements that apply to public entities, including PHAs, and should be reviewed in their entirety to ensure compliance with the ADA.

Site and neighborhood standards

HUD's site and neighborhood standards implement Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and various Executive Orders and implementing regulations with respect to the site selection for housing receiving HUD assistance. Site and neighborhood standards apply when PHAs use HUD financial assistance to acquire, rehabilitate, or construct housing

Provisions of 24 CFR § 1.4 apply to the sites and locations of housing and facilities. Specifically, PHAs must not select sites or locations with a discriminatory purpose and selections must not have a discriminatory effect. This includes siting decisions that segregate minority populations (see 24 CFR §§ 1.4(b) (1) (iii) and 1.4(b) (3)).

Provisions of 24 CFR part 8 apply to the sites and locations of housing and facilities. Specifically, PHAs must not select sites or locations of a federally assisted facility which has the purpose or effect of excluding persons with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under the Federally assisted program or activity (see 24 CFR § 8.4(b)(5)).

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Systemic Violations

A PHA is ineligible to receive a Safety and Security Grant or other discretionary Capital Funds if it has received any of the following charges, cause determinations, lawsuits, or letters of findings; and if the violation is not resolved to HUD's satisfaction at the time a decision is made to award funds.

- The PHA has been charged with a systemic violation of the Fair Housing Act or received a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability, or familial status;
- The PHA is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public importance pursuant to 42 U.S.C. 3614(a);
- The PHA is a defendant in any other lawsuit filed or joined by the Department of Justice alleging a pattern or practice or systemic violation of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, Title II of the Americans with Disabilities Act, or a claim under the False Claims Act related to fair housing, nondiscrimination, or civil rights generally including an alleged failure to affirmatively further fair housing;
- The PHA has received a letter of findings identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974; or Title II of the Americans with Disabilities Act;
- The PHA has received a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of provisions of a state or local law prescribing discrimination in housing based on sexual orientation or gender identity; or
- The PHA has received a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a state or local law proscribing discrimination in housing based on lawful source of income.

PHAs are reminded that the requirements of Section 3 are applicable to funds received under this type of grant to the same extent that they would otherwise apply to Section 3-covered assistance.

The following table describes requirements for PHAs related to the Uniform Relocation Assistance and Real Property Acquisition Act (URA):

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Nondiscrimination and Equal Opportunity Requirements	
Parts 5 and 200.	PHAs shall comply with the requirements of 24 CFR Part 5 (General HUD Program Requirements; Waivers) and 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards).
Nondiscrimination and Equal Opportunity.	PHAs shall comply with all applicable nondiscrimination and equal opportunity requirements, including HUD'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. PHAs shall affirmatively further fair housing in their 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).
Displacement, Relocation, and Real Property Acquisition.	All acquisition or rehabilitation activities carried out under the Capital Fund must comply with the Uniform Relocation Act (URA).
	The URA is a federal law that prescribes requirements that must be satisfied when real property is acquired for a federally-funded project. The URA also prescribes relocation assistance and payments that must be provided to persons displaced as a result of acquisition, rehabilitation, or demolition of real property for a federally-funded project.
	HUD Handbook 1378 (Real Estate Acquisition and Relocation Policy and Guidance) provides HUD policy and additional guidance on implementing the URA and 49 CFR Part 24 for HUD-funded programs and projects.
	Demolition or disposition under Section 18 of the 1937 Act is covered by the relocation provisions at 24 CFR §970.21, not the URA. However, if the demolition or disposition is part of a project involving Capital Funds or any additional HUD funds (other than Section 18 disposition proceeds), the URA will apply.
	PHAs are advised to begin planning URA compliance as soon as they begin planning any activity that will eventually require land acquisition or tenant relocation, either of existing public housing residents or residents of acquired properties.
Section 3.	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. Under Section 3, to the greatest extent feasible, new employment, contracting, or job training opportunities created in connection with housing rehabilitation, housing construction, or other public construction projects must be given to Section 3 residents. In addition, to the greatest extent feasible, new contracts for housing rehabilitation, housing construction, or other public construction projects must be awarded to Section 3 business concerns.

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6.9. Compliance with Physical Standards

Lead-Based Paint and Fire Safety. PHAs shall comply with the lead-based paint poisoning protection standards at 24 CFR §905.308 (b)(5) and the fire safety standards at 24 CFR §905.308(b)(6).

Design and Construction. PHAs shall meet the following design and construction standards, as applicable, for all development and modernization:

- 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; promote security; promote energy conservation; and be attractive so as to harmonize with the community.
- All development projects shall be designed and constructed in compliance with the following codes, laws, and standards identified in 24 CFR §905.312(b) and (c), specifically:
- A national building code, such as those developed by the International Code Council or the National Fire Protection Association; and the 2009 International Energy Conservation Code (IECC), or ASHRAE standard 90.1-2010, "Energy Standard for Buildings Except Low-Rise Residential Buildings," for multifamily high-rises (4 stories or higher) (see 24 CFR 905.110), or a successor energy code or standard that has been adopted by HUD pursuant to 42 U.S.C. 12709 or other relevant authority;
- Applicable state and local laws, codes, ordinances, and regulations;
- 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);
- 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
- 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.

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6.10. Affordability Requirements

Operation as Public Housing. Each Public Housing Project must be maintained and operated as public housing until the latest expiration date of any of the three restrictive use periods below:

- Development as Public Housing. 40-year period that begins on the date on which the Project becomes available for occupancy, as determined by HUD;
- Modernization with Capital Funds. (other than for Management Improvements) 20-year period that begins on the most recent date that the PHA expended Capital Funds to a Project; and
- Operating fund. 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.

Example. An existing project was constructed in 1964, at which time a 40-year use restriction was placed on the property. That use restriction expired in 2004. The project received Capital Funds for modernization in 1984 and again in 2001; these 20-year use restrictions expire in 2004 and 2021. The project stops accepting Operating Fund Assistance in 2025. The project must be operated as public housing until 2035, 10 years after the latest date the project received subsidy, unless HUD permits disposition of the property from the public housing program pursuant to Section 18 of the 1937 Act.

Use Restriction Secured by Declarations. The use restriction identified above is memorialized in the ACC and the CF ACC Amendment, as well as by Declarations recorded against the property.

- For land acquired with Capital Funds, a Declaration of Trust (Development) (currently Form HUD-52190-A) (or in the case of Mixed-Finance Development, a Declaration of Restrictive Covenants) must be recorded against the property.
- For Public Housing Projects developed by a method other than by mixed finance, a Declaration of Trust (Development) (currently Form HUD-52190-A), having a minimum term of 40 years, must be recorded upon the earlier of acquisition of property or HUD approval of the Development Proposal.
- For Public Housing Projects developed by the Mixed-Finance Development method, a Declaration of Restrictive Covenants, in a form approved by HUD, and having a minimum term of 40 years, must be recorded at closing.
- For Modernization projects, a Declaration of Trust (Modernization) (currently Form HUD-52190-B), having a term of 20 years, begins on the latest date a PHA signs CF ACC Amendment for a Public Housing Project.

Restriction on Transfers. Among other things, the Declarations, ACCs and Section 30 of the 1937 Act prohibit any Mortgage or Security Interest against a Public Housing Project without HUD's prior written approval. A PHA may obtain such approval through approval of a Security Interest pursuant to Chapter 11 or approval of a Mixed-Finance Project pursuant to Chapter 9.

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Exhibit 6.1. **Mandatory Contract Clauses**

(For purchases above the Federal Small Purchase Threshold)

- **Mandatory Requirements for Construction/Development Contracts greater than $150,000***. PHAs must incorporate the clauses contained in Form HUD-5370, General Conditions of the Contract for Construction, and the applicable Davis-Bacon wage decision.

- **Mandatory Requirements for Non-Construction Contracts (without maintenance work) greater than $150,000*.** PHAs must incorporate the clauses contained in Section I of Form HUD-5370-C, General Conditions for Non-Construction Contracts.

- **Mandatory Requirements for Maintenance Contracts (including non-routine maintenance work) greater than $150,000.*** PHAs must incorporate the clauses contained in Sections I and II of Form HUD-5370-C, General Conditions for Non-Construction Contracts.

Acceptable Methods of Incorporation. PHAs may utilize any one or any combination of the following methods to incorporate mandatory clauses and applicable wage decisions into bid specifications and contracts. PHAs may:

Attach the HUD form(s), and/or wage decisions, as printed;

Incorporate the clauses/text of the applicable HUD form and wage decision into other documents (e.g., into the PHA's own forms) that are bound/attached to the contract (and bid specifications, if applicable) or incorporated by reference (see paragraph 3, below).

Incorporate the clauses or HUD forms and/or any applicable Davis- Bacon or HUD wage decision by reference. The reference must be specific as to the exact clauses or form(s) that are incorporated, and where the clauses or forms(s) may be accessed or obtained (e.g.,HUDClips or PHA web site). A Davis-Bacon wage decision (applicable to construction/development work) may be incorporated by reference to www.wdol.gov and to the specific number, modification number, and date of the wage decision. HUD wage decisions (applicable to maintenance work) are not available at HUD's website; however, a PHA may post any applicable HUD wage decision to its own website and reference that site. PHAs must provide hard-copies of any referenced clauses, forms, and/or wage decisions on request.

However, PHAs may not make any changes to these HUD forms without HUD's approval. Any changes currently require approval of the Assistant Secretary of Public and Indian Housing, the Principal Deputy Assistant Secretary of Public and Indian Housing or the General Deputy Assistant Secretary for Public and Indian Housing.

* The $150,00 threshold is tied to the Federal Simplified Acquisition Threshold (2 CFR 200.88). When the Federal Simplified Acquisition Threshold changes, these thresholds change accordingly.

TRAINING

Exhibit 6.2. Mandatory Contract Clauses – all purchases

In addition to other provisions required by HUD, pursuant to 2 CFR Part 200, Appendix II, "Contract Provisions for non-Federal Entity Contracts Under Federal Awards" all PHA contracts expending Capital Funds must contain provisions covering the following, as applicable copied from Appendix II to Part 200 (requirement referenced at2 CFR 200.326):.

(A) **Contracts for more than the simplified acquisition threshold currently set at $150,000**, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) **All contracts in excess of $10,000** must address termination for cause and for convenience by the PHA including the manner by which it will be effected and the basis for settlement.

(C) **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of ''federally assisted construction contract'' in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, ''Equal Employment Opportunity'' (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and implementing regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

(D) **Davis-Bacon Act, as amended (40 U.S.C. 3141–3148).** When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by PHAs must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, ''Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction''). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The PHA must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The PHA must report all suspected or reported violations and must also include a provision for compliance with the Copeland ''Anti-Kickback'' Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The PHA must report all suspected or reported violations to the Federal awarding agency.

TRAINING

(E) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708**). Where applicable, all contracts awarded by the PHA in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of ''funding agreement'' under 37 CFR §401.2(a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ''funding agreement,'' the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

(G) **Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—** Contracts and sub-grants of amounts in excess of $150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) **Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).**

(I) **Debarment and Suspension (Executive Orders 12549 and 12689)**—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

TRAINING

(J) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**—Contractors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) **See § 200.322 Procurement of recovered materials.**

TRAINING

Exhibit 6.2 A. Periodic Part 58 Broad Scope Review of Categorically Excluded CFP Activities

EXEMPT

58.34 (a): Exempt Activities

I) Environmental Studies (completion of Part 58 review)
II) Information and financial services (IPA Audits)
III) Administrative and management activities)
IV) Public Services with no physical impact, including but not limited to services concerned with
   a. Employment
   b. Crime prevention
   c. Child care
   d. Health
   e. Drug abuse
   f. Counseling Services
   g. Education programs
   h. Energy Conservation
   i. Welfare or recreational needs

V) Inspection and testing of properties for hazards or defects

VI) Purchase of insurance

VII) Purchase of tools

VIII) Engineering or design costs

VIV) Technical assistance and training

IX) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

X) Payment of principal and interest on loans made or guaranteed by HUD

XI) Categorical Exclusion items that require no compliance with any other Federal laws and authorities cited in 24 CFR 58.5.

CEST

58.35 (a): Categorical Exclusions, Subject to 58.5

*Note these projects often convert to exempt pursuant to 24 CFR 58.34(a)(12)

I) Modernization/Rehabilitation

TRAINING

CENST

58.35 (b): Categorical exclusions not subject to §58.5

I) Tenant-based rental assistance
II) Supportive Services (health care)[list the other examples from the regulations
III) Operating costs [list all of 58.35(b)(3) to (7) and add examples

TRAINING

Exhibit 6.3. Environmental Review Process

Chapter 7. Obligation, Budget Revision, Expenditure, and Closeout

This chapter describes the requirements relating to the obligation and expenditure of Capital Fund grants in a timely manner. It also describes the conditions under which a PHA may request an extension of the obligation end date and other related administrative actions associated with obligation, expenditure, and closeout of Capital Fund grants, such as monitoring and sanctions.

7.1. What is an Obligation?

Generally, an obligation is a binding agreement (executed by all parties) for work or financing that will result in outlays of Capital Funds by the PHA, immediately or in the future. The date of the contract signing is the obligation date. If the parties sign the contract at different times, the date of the last signature is the obligation date. In some instances, a purchase order would constitute an obligation (e.g., large items such as stoves or refrigerators). All obligations should reflect work items detailed in the approved 5-year action plan.

Certain costs have different definitions of obligation based on the nature of the cost. The table below describes when certain costs under the Capital Fund Program are considered obligated.

Cost	When Obligation Occurs
Administrative Costs (BLI 1410).	**When HUD approves a PHA's 5-Year Action Plan that includes Administrative Costs in the budget.** Once the 5-Year Action Plan is approved, the PHA can voucher and draw down funds in a lump sum or over time (for example, on a monthly basis) to pay staff salaries and benefits up to the 10% cost limitation. PHAs can draw funds up to, but not more than, 3 days in advance of a valid expense and should only draw the amount needed to cover such costs**.**
Capital Funding Financing Program (CFFP) Transactions.	When the PHA executes the loan or bond documents that obligate the PHA to repay these proceeds, also known as the financial closing. Before execution of any CFFP obligation, there must be a HUD-approved CFFP proposal in place, and the CFFP obligation must adhere to the HUD-approved CFFP proposal.
CFP Fee	When HUD approves the PHA's 5-Year Action Plan that includes the CFP Fee in the budget. *The CFP Fee is a type of administrative cost for Asset Management PHAs*
Contingency (BLI 1502).	**Funds cannot be obligated under Contingency (BLI 1502** The PHA must submit a budget revision to move funds from Contingency to another line item. Once the budget revision is approved, the BLI to which the funds are re-budgeted will determine what constitutes an Obligation of those funds. Funds that are budgeted in BLI 1502, but are not drawn down, are not obligated for Capital Fund purposes. (Note: BLI 1502 cannot be replenished and can only be used for change orders under BLI 1460. If no change orders were required, the funds may only for used for BLI 1460 eligible items)
Conventional Development.	When the contract for construction or development work is executed.
Mixed-Finance Development.	When the transaction's financial closing occurs.

TRAINING

Cost	When Obligation Occurs
Predevelopment.	Capital Funds intended for predevelopment assistance in accordance with Section 9.10.A of this Guidebook and 24 CFR §905.612 are obligated under the standard procedures (i.e., when the PHA enters into a binding contract, such as for architectural and engineering services and , demolition, abatement.) For Conventional Development, the PHA can obligate up to 5% of the total development cost for predevelopment costs without HUD approval. For Mixed-Finance Development, the PHA cannot obligate Capital Funds for predevelopment costs without HUD approval.
Force Account Labor Single task.	Capital Funds used for one specific task performed with Force Account Labor are obligated when the specific task is started and includes materials and equipment included with that task if purchased at the same time (otherwise the obligation for materials and equipment occurs when such items are actually purchased)
Force Account Labor Multiple, but related tasks.	When Capital Funds are obligated for multiple, but related tasks, there must be a nexus between the activities such that the completion of one leads to the beginning of the next. Capital Funds used for multiple, but related tasks, are considered obligated **when the first task is started, such as kitchen cabinet replacement followed by kitchen floor replacement, but only where funds continue to be expended at a reasonable rate.**
Multiple, but unrelated tasks.	Capital Funds used for multiple, but unrelated tasks, such as kitchen cabinet replacement followed by roof replacement, are considered obligated **when each separate task is started and materials and equipment must follow the same process.**
	PHAs should document each such Obligation with time sheets and payroll records that are tied directly to work identified in the 5-Year Action Plan that was to be accomplished using Force Account Labor.
Management Improvements (BLI 1408)	Capital Funds used for Management Improvements (BLI 1408) are obligated when the PHA has obligating documents, such as an executed contract, for the applicable work items.
	Funds are available to be drawn down once HUD has approved the budget included in the 5-Year Action Plan and they are available in LOCCS. Funds cannot be disbursed without obligating documents.
	Example 1: If the Management Improvements work item is training for PHA personnel in accounting systems, an acceptable obligating document would be the contract for a third party to conduct the training.
	Example 2: If the Management Improvements work item is an activity conducted by PHA staff intended to foster equal opportunity or resident self-sufficiency, the acceptable obligating document would be the PHA's plan for the activity that identifies the tasks to be performed by PHA personnel, the PHA personnel performing the tasks, the amount of time for each staff member and a budget accounting for the costs (personnel and materials). In this instance, the obligation occurs on the date the PHA personnel initiates the first task associated with the work item. In order for HUD to monitor grants accurately, the PHA should notify the Field Office when the first task is initiated.
Transfers to Operations (BLI 1406).	When the PHA submits a voucher to draw down the funds from LOCCS. The date of the voucher submission is the Obligation date.
	Funds that are budgeted in BLI 1406, but are not drawn down, are not obligated for Capital Fund purposes.

TRAINING

7.2. Obligation Requirements of Capital Fund Grants.

Generally the statute requires that at least 90 percent of a Capital Fund grant be obligated within two years of the date that funds are made available. The date the funds are made available is established as the obligation start date in the Line of Credit Control System (LOCCS) and two years from the obligation start date, is the obligation end date (OED) in LOCCS. The obligation requirement is stated in section 905.306(a) of the Capital Fund Final Rule. (N.B. The requirements on obligation and expenditures were formerly located in 24 CFR 905.120 of the regulation). The required timeframes for obligation may differ depending on the type of Capital Fund Grant as indicated below:

1. **Capital Fund Formula Grants** - PHAs have 24 months from the obligation start date, identified in LOCCS, to obligate a minimum of 90% of the authorized amount of a Capital Fund grant.

    - In the case of Capital Fund formula grants, the PHA signs a Capital Fund ACC Amendment. This ACC Amendment establishes the timeframe for obligation and expenditure. The obligation start date is identified as the "effective date" on the ACC Amendment.

    - Demolition Disposition Transitional Funding is included in the Capital Fund Formula Grant. Unlike RHF, it is NOT give as a separate grant; therefore, the OED for DDTF is the same OED as the Formula Grant.

2. **Replacement Housing Factor Grants** - In the case of Replacement Housing Factor (RHF) grants, PHAs have 24 months from the time they accumulate adequate funding[1] (up to 5 years of grants) to obligate a minimum of 90% of the authorized amount:

    - All RHF grants in the HUD-approved accumulation must obligate 90% by the obligation end date established for the accumulation. In order for a PHA to accumulate RHF grants the PHA must have the accumulation approved by the Field Office (FO) in the RHF Plan. (See Notice PIH 2012-41) All RHF grants in the accumulation have the same OED[2].

    - For non-accumulated RHF grants, the OED is the same as the OED of the formula grant for that fiscal year. The PHA must obligate at least 90% of the Capital Fund RHF grant by the OED in LOCCS.

TRAINING

[1] PHAs are required to submit a RHF Plan to the HUD Field Office for approval See Notice 2012-41 PHA. A PHA can propose to accumulate 2 years, 3 years, 4 years or 5 years.

[2] Due to the Account Closing Statute, one exception to this rule is as follows: when a PHA accumulates 5 consecutive years of RHF grants, the Disbursement End Date (DED) for the first grant in the accumulation must fall before the end of the fiscal year in which the other 4 grants have their DED. For example, if a PHA accumulates 2010-2014 grants, HUD sets July 29, 2018 as the DED for the first grant in the accumulation and October 29, 2018 as the DED for the remaining 4 grants.

3. **Emergency & Safety and Security Grants** - PHAs have 12 months from the obligation start date established in LOCCS to obligate a minimum of 90% of the authorized amount of Emergency Grants and Safety and Security Grants.

    - In the case of emergency grants the PHA has an emergency ACC Amendment which establishes the timeframe for obligation and expenditure. The ACC Amendment specifies the obligation start date, identified as the "effective date."

4. **Disaster Grants** - PHAs have 24 months, from the obligation start date, established in LOCCS, to obligate at least 90% of the authorized amount of a Disaster grant.

    - Disaster Grants follow the requirements of Capital Fund formula grants and their ACC Amendment, which establishes the timeframe for obligation and expenditure. The ACC Amendment specifies the obligation start date, identified as the "effective date" on the ACC Amendment.

5. **RAD Conversion.** At the request of the PHA, HUD will extend the OED for Capital Funds (including RHF and DDTF) used in a RAD conversion for up to 60 months (5 years) after the effective date of the applicable ACC Amendment. [PIH-2012-32 (HA), REV-1]

Capital Funds may only be obligated for Eligible Activities identified in the 5-Year Action Plan that has been approved by the PHA Board of Commissioners and HUD. This requirement applies to funds obligated by the PHA both for work to be performed by contract labor (i.e., contract award) or by Force Account Labor (i.e., work performed by PHA employees).

7.3. OED Extension

PHAs may request an extension of the obligation end date for reasons identified in the statute and regulations. HUD Headquarters will receive and review these requests and prepare them for approval or rejection by the Secretary, Deputy Secretary or Assistant Secretary. The Assistant Secretary has been given this authority to approve extensions in annual HUD Appropriations Acts.

The authority for extensions is section 9(j) of the 1937 Act and the corresponding regulations at 24 CFR 905.306.

Justifications for Extension of the Obligation End Date On August 1, 2003, the Department issued a regulation in the *Federal Register* that implemented Section 9(j) of the 1937 Act. The regulation added Section 905.120 to 24 CFR Part 905. The new CFP Rule moved this authority to 24 CFR 905.306.. Under this authority, a PHA may request:(1) an extension of the OED, for a period of up to 12 months, based on:

(i) The size of the PHA;
(ii) The complexity of the Capital Fund Program of the PHA;
(iii) 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
(iv) Such other factors as the Secretary determines to be relevant (See 905.306(c) or.

TRAINING

(2) an extension of the OED for such a period as determined to be necessary, if HUD determines that the failure of the PHA to obligate assistance in a timely manner is attributable to:

(i) Litigation;
(ii) Delay in obtaining approvals of the Federal, State, or local government, that is not the fault of the PHA;
(iii) Compliance with environmental assessment or abatement requirements;
(iv) Relocating residents;
(v) An event beyond the control of the PHA; and
(vi) Any other reason established by the Secretary in a notice in the *Federal Register*. (HUD has not issued a notice establishing additional reasons; consequently, at this time HUD cannot approve extensions based on this criteria.)

All requests for extensions of the OED should be submitted to HQ at least 45 days before the OED. Submissions should 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 name> (<PHA code>), for Capital Fund <Grant Number>. See page 3 of PIH Notice 2011-24(HA).

The OCI staff, in conjunction with Program Counsel, review requests for extensions of the obligation end date and make recommendation, to the Assistant Secretary, for approval/ disapproval. OCI sends a letter to the housing authority either approving or denying the PHA's request for an extension; a copy will be sent to FO.

Approval of an OED extension automatically extends the grant's Expenditure End Date. The statute and the regulations only allow an extension of the expenditure end date by virtue of an approval of an extension of the obligation end date.

7.4. PHA Reporting

- PHAs shall report monthly on the obligation and expenditure of each open Capital Fund grant in LOCCS. The grant closeout process is further discussed in Section 7.7.
- PHAs have 5 business days after the date of the OED to report their obligation information in LOCCS.
- PHAs that do not report monthly in LOCCS may be subject to additional reviews of supporting documents.
- If a PHA fails to complete its monthly reporting in LOCCS, the system will suspend drawdowns for all open Capital Fund grants; the PHA will not be allowed to voucher funds until it completes obligation reporting.
- PHAs must report on the OED, even if they reported at least 90% Obligation of the authorized amount in the previous reporting period. Monthly obligation and expenditure reporting in LOCCS is required until the grant is placed in "Pre-Audit" status in LOCCS.

TRAINING

7.5. HUD Monitoring

Headquarters will make information available to Field Offices regarding grants with upcoming OEDs, providing reports at intervals of 90, 60 and 30 days prior to the OED. This information will include grants that have not yet reached 90% obligation, have failed to report obligation amounts in LOCCS, and have undisbursed funds in BLI 1406.

The Field Offices are responsible for monitoring the obligation of grant funds against the applicable deadlines in LOCCS and communicating with PHAs in their jurisdiction in order to confirm data is correct, to estimate whether the PHA will meet the 90% obligation by the OED, and to work with the PHA to meet the OED.

Determining Compliance. To determine compliance with the 90% obligation requirement, HUD may request and/or review some or all PHA documentation supporting the obligation of each grant at any time and as HUD determines appropriate.

Determining Noncompliance. The 1937 Act requires that all subsequent Capital Fund grants be withheld from a PHA that is not in compliance with the deadlines described in this section. If Headquarters determines that a PHA has failed to meet the 90% Obligation requirement, it will:

- Notify the PHA and Field Office of the violation; and
- Suspend the award of all Capital Fund grants (including Capital Fund formula grant) for the following year (and, if necessary, for subsequent years) until the PHA's failure to meet the 90% Obligation requirement has been cured, the penalty described below has been applied against the Capital Fund formula grant for the following year, or the noncompliance has been otherwise resolved.

(Note: As of November 25, 2013, if a PHA fails to obligate 90 percent of any RHF grant, the RHF funds that have not been obligated by the OED are automatically recaptured.)

De-obligation and Re-obligation. If a PHA has a legitimate obligation for a Capital Fund grant and if the PHA subsequently must void that contract, (e.g., a PHA may have signed contracts with architects and engineers to develop new units at an identified site and then an environmental review indicates that the site cannot be approved for development) then the PHA may de-obligate the funds, locate a new site for development, and then re-obligate the funds.

In this instance, the PHA will not be penalized if the obligation end date has passed and the PHA has to report that the grant is no longer 90 percent obligated. This is one of the reasons why PHAs must report the percentage obligated on the obligation end date, even if they have reported 90 percent or more obligated for reporting periods prior to the obligation end date. However, if the expenditure end date has passed, the grant cannot be re-obligated and the funds must be recaptured.

The PHA should contact the Field Office and describe the conditions that have caused the PHA to void the original contracts. If the Field Office accepts the PHA's description, the PHA should report the de-obligation of the funds and the Field Office should include a Project Note.

TRAINING

7.6. Consequences of Noncompliance with the Obligation End Date – Penalties and Sanctions

When a PHA fails to comply with the OED, the statute and regulations require that HUD withhold the PHA's next Capital Fund grant until the PHA obligates at least 90% of its past due grant.

- HUD (HQ OCI) suspends the PHA's next Capital Fund grant once it has been awarded.
- HUD (HQ OCI) enters the standard OED project note into LOCCS to explain why the grant has been suspended, i.e. This PHA failed to obligate 90% of (grant # in violation of the OED) by the obligation end date of _____.

When the PHA cures the non-compliance, HUD will release the Capital Fund Grant that has been withheld, less any penalty.

- The penalty for non-compliance is a reduction of the new Capital Fund Grant by 1/12 for every month or portion of the month that the PHA was in non-compliance with the OED requirements of the previous grant. To determine the 1/12 penalty HUD divides the authorized amount of the next year's Capital Fund grant award by 12 and then multiplies the resulting $ amount by the number of months of noncompliance.
- **The penalty is not imposed on the noncompliant grant; it is applied to the suspended grant.** The PHA is encouraged to obligate the noncompliant grant as quickly as possible to reduce the amount of the PHA's penalty.
- REAC is given a list of PHAs that have a penalty applied to Capital Fund grants as a result of noncompliance with the OED. PHAs will receive a reduced PHAS score for the FY of the grant that is penalized. See 24 CFR 902 Subpart E.

***Example of penalty application for a PHA which failed to meet and OED**:* A PHA failed to obligate at least 90 percent of a FY 2010 Capital Fund formula grant by the OED of July 10, 2012.

- The PHA must continue to obligate this noncompliant grant until it can demonstrate to HUD that it has obligated 90% of the grant.
- The PHA reports that it achieved 90% obligation of the FY 2010 grant on October 12, 2012, exactly 3 months and 2 days after the obligation end date. This information is used by HUD to calculate the PHA's penalty.
- The PHA will have a 4 month penalty on the next year's Capital Fund formula grant for being in noncompliance. Even 2 days is considered a portion of a month, and will result in an additional 1/12 being calculated towards the penalty.
- If the FY 2013 grant is the next formula grant to be awarded and the authorized amount is $140,000, HUD divides the FY 2013 grant amount by 12 which equals $11,667. The PHA's penalty is $11,667 times 4 or $46,668. The penalty amount is subtracted from the authorized amount of the FY 2013 grant. Subsequently, the PHA's FY 2013 grant is reduced from $140,000 to $93,332.

TRAINING

- (Authorized Amount of new grant)-[(Authorized Amount of new grant/12) *(penalty months)]=Reduced Grant amount
- HUD sends the PHA a new FY 2013 ACC Amendment to execute and thereby recaptures the $46,668 penalty.
- HUD notifies REAC and the PHA receives a reduction to its FY2013 PHAS score.

The maximum penalty a PHA can incur is to lose 12/12 or 100% of the next year's Capital Fund grant.

7.7. Types of Budget Revisions

The PHA's budget in LOCCS is based upon the HUD approved Annual Statement and Capital Fund 5-Year Action Plan. During the 48 month period of the Capital Fund grant it may be necessary to revise the budget in order for the PHA to obligate and expend its grant. The timing of the PHA's budget revisions is critical. A budget revision that is submitted by the PHA and entered into LOCCS by the FO after the DED does not allow the PHA to disburse funds in time to meet the established DED, therefore all budget revisions should be submitted to the FO 45 days prior to the DED.

PHAs must amend the budget any time there is a change in the work items or amounts to reflect its actual expenditure of the Capital Funds. Budget revisions are typically submitted for the following reasons:

- To conform to a reissued CF ACC Amendment (for example, a recapture for late obligation);
- To reflect a change in plans during the obligation and expenditure phases (for example, a construction change order is issued to re-budget funds from Contingency (BLI 1502) to Dwelling Structures (BLI 1460));
- As part of the preparation of the Performance and Evaluation Report (P&E Report);
- At closeout of a Capital Fund grant; and
- To comply with HUD requirements following a program assessment, official audit review, or similar review.

PHAs are encouraged to effectively manage their funded activities (management as well as physical improvements) in a timely manner so as to provide ample time to undertake the necessary budget revisions.

The following table describes the different types of budget revisions.

TRAINING

Budget Revision Type	Description
Budget Revisions Due to Revised ACC Issuance	If a Capital Fund grant needs to be amended by issuance of a revised ACC Amendment, the PHA must revise its budget to distribute any increase or decrease or to zero out previously listed work items. Amended ACCs are issued when the initial grant is reduced as a result of an audit or a penalty, where HUD determines that the PHA is not in compliance with obligation and expenditure deadlines, or for other administrative or programmatic reasons as established by HUD.
	A budget revision is not required when HUD fully recaptures a Capital Fund Grant except as part of the closeout process.
Budget Revisions Related to Obligation, Expenditure, and Closeout	In administering the Capital Fund grant, PHAs have the operational flexibility to increase, decrease or zero-out previously approved work items.
	Once eligible activities are officially contracted, a PHA can report the related obligated funds in LOCCS with disbursements and expenditures reported in LOCCS thereafter.
	PHAs must submit budget revisions to the Field Office before the obligation end date and expenditure end date established in LOCCS for each grant. Late budget revisions cannot be processed if the proposed revisions impact the total of funds obligated as of the obligation end date.
	PHAs should submit budget revisions no later than 45 days prior to the EED in order to properly expend Capital Funds in a timely manner.
In Connection with P&E Reports.	As the PHA prepares the P&E Report for closeout, it may determine that budget revisions are necessary in order to line up the budgets and expenditures.
Closeout of Capital Fund Grant.	PHAs may submit budget revisions toward the end of the EED in order to properly expend Capital Funds in a timely manner. A PHA may simultaneously submit a budget revision and a final budget for closeout of a Capital Fund grant.
Other Budget Revisions	The Field Office may require a PHA to amend its 5-Year Action Plan as a result of a program review or assessment, an official audit review by the OIG or other authorized entity, or other administrative reasons.
	Examples include PHAs under receivership, a CFP with a defined HUD review threshold following a management review or program audit, or other administrative directives (such as voucher approval for disbursement threshold exceeding 10% of the authorized amount in the BLIs 1410 through 1485).
	In these cases, the Field Office will advise the PHA and provide guidance regarding the needed changes to the 5-Year Action Plan.

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7.8. Budget Revision Procedures

A PHA may amend its 5-Year Action Plan without HUD approval unless the amendment constitutes a Significant Amendment. The PHA shall provide a copy of any amended 5-Year Action Plan to the Field Office before the PHA undertakes any related contract obligations and/or expenditures. This includes budget revisions that identify new work items, only redistribute funds among BLIs or within a BLI, or eliminate funding for previously listed activities.

Significant Amendments. Any budget revision that constitutes a PHA's Significant Amendment or Modification to its 5-Year Action Plan, must be submitted to HUD for review and approval.

Amendments without HUD Approval (Fungibility). The CFP Final Rule permits a PHA to substitute work items among any years in the latest approved 5-Year Action Plan without HUD approval. Fungibility is designed to assist the PHA in meeting the OED and EED described in this chapter when the PHA might otherwise miss OED or EED. In order to take advantage of fungibility, the following conditions must be met:

- The work item is included in the 5-Year Action Plan;
- The work item must be in a budget line item that appears in both years' 5-year Action Plan budgets (e.g., a work item in BLI 1460 can only be moved to BLI 1460 of the other year's grant and the new work item must have an environmental review completed);
- The work item to be moved must have an OED that meets the timeframe of the Capital Fund grant to which the work item is to be moved; and
- The Capital Fund Program grant is an open grant (i.e., the PHA does not have a pre-audit date).

Fungibility with HUD Approval. If a planned fungibility involves a new work item, any request for a Significant Amendment or Modification of the 5-Year Action Plan to include the work item must be submitted to the Field Office at least 30 days prior to the OED or EED**.**

HUD Approval Process. HUD Approval is only required for a new work item, and any request for a Significant Amendment or Modification of the 5-Year Action Plan. However, the Field Office should review all budget revisions, (except for those relating to previously approved work items or zeroing-out of line items), to ensure that the budget revisions do not constitute a significant amendment and to determine if the existing Environmental Review under 24 CFR Parts 50 or 58 is sufficient or if additional environmental review is required.

- If the Field Office rejects a budget revision, it shall advise the PHA on the corrections needed to provide an approvable budget amendment request.
- Upon approval, the Director of Public Housing for the Field Office shall sign and date the approved budget revision. No HUD signature is required for budget revisions not requiring HUD approval.

The PHA must submit any budget revisions to the Field Office in time for the PHA to obligate the funds prior to the OED. PHAs must submit budget revisions at least 30 days prior to the OED or EED.

TRAINING

7.9. Expenditure of Capital Fund Grants

What is an Expenditure?For funds to be considered expended, payments must meet the definition of "Expenditure" found in Chapter 1 of this Guidebook. While Expenditure relates to the amount of bills due and payable, as whole or on a particular item, pursuant to an executed contract or another type of obligating document, disbursement is the act of distributing Capital Funds from the HUD accounting system through LOCCS to the PHA's bank account for the purpose of paying those bills.

Expenditure End Date (EED) Requirements. The EED is the final date that a PHA may expend (pay out) funds drawn from LOCCS for bills due and payable for Capital Fund-related expenses. Generally the statute requires that 100% percent of a Capital Fund grant be expended within four years of the date that funds are made available, or the obligation start date. The required timeframes for expenditure may differ depending on the type of Capital Fund Grant as indicated below:

- **Capital Fund and Disaster Grants.** No later than 48 months after HUD executes the applicable CF ACC Amendment, a PHA must expend 100% of each Capital Fund grant, including formula grants, RHF (if funds have not been accumulated to extend the OED), and Non-Presidentially Declared Natural Disaster Grants.

- **Emergency Grants.** No later than 24 months after HUD executes the applicable CF ACC Amendment, a PHA must expend 100% of any Emergency Grant, including Safety and Security Grants.

- **Accumulated RHF Funds.** If the Field Office has approved accumulation of RHF funds, the EED for all accumulated years is the same as the EED of the final RHF grant in the 5-year grant period.

- **RAD Conversion.** If HUD has approved extension of the OED for Capital Funds to 60 months (5 years) after the effective date of the applicable CF ACC Amendment, the EED is also extended in the same amount.

The EED may be extended only by the period of time of a HUD-approved extension of the OED. No other extensions of the EED are permissible under the 1937 Act. All Capital Funds not expended by a PHA by the EED will be recaptured by HUD.

Disbursements. As noted above, disbursement is the distribution of Capital Funds from the HUD accounting system through LOCCS to the PHA's bank account for the purpose of paying bills that are due and payable. This process requires that the PHA have first obligated the Capital Funds

To initiate disbursement of Capital Funds, the PHA must submit a voucher for payment through LOCCS. The PHA may only submit a voucher to disburse funds for bills due and payable for work that has already been performed or for items received.

Once funds are disbursed, i.e. transferred from LOCCS to the PHA's bank account, the PHA must pay the applicable bill(s) within 3 business days after the deposit of the funds into the PHA's bank account. PHAs cannot expend nonfederal funds first to pay the applicable bills and then use Capital Funds to reimburse themselves.

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The Disbursement End Date (DED) is the final date that a PHA may submit a voucher for disbursement of Capital Funds. HUD uses the DED to track, through LOCCS, a PHA's compliance with EED as the PHA cannot expend funds in order to meet its EED obligations without having first submitted a voucher for disbursement of the funds into the PHA's bank account.

Drawdown Process. After approval of the PHA's 5-Year Action Plan the PHA can generally draw down funds without further HUD review, unless the Field Office determines otherwise. If additional review is required, the Field Office shall request additional documentation from the PHA in order to complete the review. If the Field Office does not approve a particular draw request, the Field Office will notify the PHA of the reason(s) for its decision. Additional reviews may, at the discretion of the Field Office, be required for the following:

- Individual drawdowns;
- Drawdowns above a certain threshold determined by the Field Office (e.g., $100,000); or
- All drawdowns, also known as auto review.

PHAs may not draw down funds from one BLI for expenditures associated with another BLI. If a PHA disburses funds from the wrong BLI, the Field Office will direct the PHA to immediately transfer those funds back to LOCCS, and the funds will be credited back to the BLI from which the funds were incorrectly withdrawn. Once the misdirected funds are returned to LOCCS, the PHA can submit a budget revision to move the funds to another BLI. HUD discourages Field Offices from executing disbursement adjustments in LOCCS. Please follow the standard budget adjustment process for amending funds in LOCCS.

- *Administrative Costs* (BLI 1410). PHAs can voucher and draw down funds for Administrative Costs in a lump sum or over time (for example, on a monthly basis) to pay staff salaries and benefits up to the 10% limit. PHAs can draw funds up to, but not more than, 3 days in advance of a valid expense and should only draw the amount needed to cover such costs**.**

- *Transfers to Operations* (BLI 1406). PHAs can voucher and drawdown funds to Operations at any time after HUD approval of the 5-Year Action Plan.

    - Funds are available to be drawn down once HUD has approved the 5-Year Action Plan and the funds are available in LOCCS.

        - A PHA is not able to submit a voucher in LOCCS before it self-reports the funds as obligated; therefore, the PHA should report the funds as obligated, and then draw down the funds immediately after the self-report.

        - The date of the voucher submission is both the Obligation and the Expenditure date.

        - Funds that are budgeted in BLI 1406, but are not drawn down, are not expended for Capital Fund purposes.

        - Upon drawdown, the funds are subject to the requirements of 24 CFR Part 990 regarding Operating Funds.

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PHA Reporting. PHAs must report obligations and expenditures in LOCCS on a monthly basis for each open Capital Fund grant. The PHA shall report monthly until a "pre-audit date" is entered in LOCCS by the Field Office after the PHA submits its closeout documents. Failure to report will result in funds being held in LOCCS until the PHA has cured the failure.

The PHA must ensure that reported Capital Fund expenditures do not exceed the disbursements made from LOCCS. This imbalance may be an indication that the PHA has paid Capital Fund expenses from another restricted PHA account, which is prohibited.

HUD Monitoring. PHAs self-report expenditures in LOCCS; therefore, Headquarters monitors disbursements of funds from LOCCS in order to monitor compliance with EED since the disbursements are automatically tracked by LOCCS. Headquarters will make information available to Field Offices regarding grants with upcoming EEDs, providing reports at intervals of 90, 60 and 30 days prior to EED. This information will include grants for which 100% of the funds have not yet been disbursed from LOCCS or reported as expended.

Field Offices are responsible for monitoring the expenditure of grant funds against the applicable deadlines in LOCCS and for communicating with PHAs in their jurisdiction that have not expended all funds in order to confirm data are correct, to estimate whether the PHA will meet the EED, and to work with the PHA to meet the EED. For example, a PHA may amend its 5-Year Action Plan to transfer from later Capital Fund grant years' work items that have already been expended to the year in which the EED is approaching. Any such amendment must occur prior to the EED. If HUD approval of the budget revision is required, such approval must occur prior to the EED.

Failure to Expend Penalty. If HUD reports indicate that a PHA has failed to expend 100% of the applicable Capital Fund grant by the EED, it:

- Notifies the PHA and Field Office of the violation; and
- Suspends the applicable Capital Fund grant in LOCCS.

(Note: PHAs have until 5 days after the EED to enter expenditures into LOCCS.)

If a PHA has a bill or invoice that was due or payable prior to the EED, it shall provide backup documentation to the Field Office, enabling the Field Office to determine whether or not the bill or invoice may be charged against the applicable Capital Fund grant.

If Headquarters concurs that the documented bill or invoice may be charged against the applicable Capital Fund grant, the LOCCS suspension is lifted and the PHA may draw the funds.

Failure to expend all funds in a Capital Fund grant from LOCCS by the EED will result in all unexpended funds being recaptured by HUD. *Note: Obligation of those funds is not sufficient to meet this expenditure requirement.* If Headquarters concurs that the PHA was not in compliance with the EED, it sends a noncompliance letter to the PHA (copying the Field Office) with a unilaterally executed ACC Amendment recapturing the unexpended, undisbursed balance of the applicable Capital Fund grant. Since Headquarters executed a unilateral ACC Amendment, the PHA is not required to sign and return the ACC Amendment to Headquarters. At this point, a PHA may begin to close out the applicable Capital Fund grant in accordance with paragraph 7.7 of this Guidebook.

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7.10. Fiscal Closeout Fiscal closeout of a Capital Fund grant includes the submission of a cost certificate; a final Performance & Evaluation Report (P&E Report); HUD approval of the cost certificate; and an audit, if applicable.

In order to initiate the closeout process, the PHA shall submit to the Field Office: the AMCC or ADCC, as applicable (Cost Certificate) and the P&E Report, marked "final." This submission may also include a budget revision conforming the 5-Year Action Plan to the P&E Report. [2 CFR §200.343] The PHA will submit these reports in LOCCS or the Energy and Performance Information Center (EPIC).

- **Actual Development Cost Certificate (ADCC).** For development projects, the PHA shall submit the ADCC (currently Form HUD-52427). Costs incurred between the completion of the development and the Date of Full Availability (DOFA) are part of the actual development cost. The PHA must submit the ADCC within 90 days after the DOFA.

- **Actual Modernization Cost Certificate (AMCC).** For modernization projects, the PHA shall submit the AMCC (currently Form HUD-53001). The PHA must submit the AMCC within 90 days after EED.

- **P&E Report.** Along with the Cost Certificate, the PHA shall submit a final P&E Report with a budget revision, if applicable.

Field Office Review of Cost Certificate. Upon receipt of the required documents, the Field Office shall review the documents as follows:

Any new or existing deficiency items have been resolved. Grants with existing deficiencies cannot be closed out until the deficiencies have been resolved.

The amounts on the final P&E Report and the Cost Certificate must agree as to funds approved, obligated and expended.

The grant number and the amount of grant funds approved, disbursed and expended on the Cost Certificate must agree with the records in LOCCS.

If the final P&E Report and the Cost Certificate indicate that excess funds, such as funds spent on an ineligible activity, have been provided to the PHA, the Field Office shall direct the PHA to remit immediately the excess funds, without waiting for the audit, and then subsequently to submit a revised "final" P&E Report or Cost Certificate, showing that total funds disbursed, obligated and expended are equal amounts. If the audit Cost Certificate shows that the PHA over-remitted funds, HUD will return the amount of the over remittance to the PHA.

When the amounts disbursed, obligated and expended are equal in LOCCS, the Field Office shall enter the pre-audit date in LOCCS (the pre-audit date cannot be a future date and does not have to be a quarter-end date). Note that the pre-audit date cannot be entered until the obligation end date has been reached.

A grant is considered open until the Field Office enters a pre-audit date in LOCCS, but once the Field Office enters the pre-audit date into LOCCS, the PHA will no longer have to enter monthly reports in LOCCS for that grant.

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Note: PHAs should not pay invoices from other sources, and later reimburse that source from the Capital Fund.

Penalty for Failure to Submit Cost Certificate and P&E Report. If the PHA does not submit the Cost Certificate and the final P&E 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" (in which 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 to the PHA.

Audit Procedures. Some PHAs do not receive sufficient federal funds to be subject to the audit requirements in 2 CFR Part 200, Subpart F. This section governs PHAs that do perform an annual audit.

When the Field Office notifies a PHA in writing that the Cost Certificate and final P&E Report are approved for audit, the PHA shall submit a copy of the Cost Certificate and final P&E Report to its independent public auditor for inclusion in annual audit.

The PHA shall provide a copy of the annual audit to HUD within 9 months from the start of the PHA's next fiscal year. If the audit contains findings, the PHA shall also submit a schedule to complete any corrective actions recommended by the auditor.

Review and Approval of Cost Certificate and Audit. For PHAs that do not perform an annual audit, HUD will review and approve the Cost Certificate based on available information and its knowledge of the Capital Fund grant. For PHAs subject to an audit, HUD will review the information from the annual audit provided by the PHA. The Field Office shall review the audit to determine if the audited costs agree with the costs shown on the Cost Certificate.

- If the audited Cost Certificate indicates that there are still excess funds, the PHA shall remit the excess funds, as directed by the Field Office.
- If the audited Cost Certificate discloses unauthorized expenditures, the PHA shall take such necessary actions as the Field Office may direct.

After the Field Office assigned to the PHA has reconciled all audited costs, the grant is approved for closeout.

Once the Cost Certificate has been reconciled with the available information or audit, as applicable, the Field Office will send a closeout letter to the PHA (Closeout Letter) and enter the post-audit end date in LOCCS, which closes out the grant.

Document Retention by Field Office. Upon certifying that the grant is closed in LOCCS, the Field Office shall reduce each file to the absolute minimum of regulatory required elements, including:

- ACC Amendment form;
- Environmental Assessment (currently Form HUD-4128, Form-7015.16 or equivalent);
- Final Signed AMCC (currently Form HUD-53001) or ADCC (currently Form HUD-52426);

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- Closeout Letter;
- Final 5 Year Action Plan Budget from that FY (currently Form HUD-50075.1), pages 1 and 2; and
- Any other significant documentation such as that related to recapture or detailing issues with grant use or abuse issue.

(Note: LOCCS forms and banking forms must be secured and kept in accordance with the record keeping requirements of 2 CFR Part 200.)

The Field Office shall file the reduced package in the appropriate PHA Capital Fund grant closeout folder in accordance with 2 CFR Part 200 (see e.g., 200.333 - .337) the Field Office's record management plan, HUD Handbook 2225.6, Records Disposition Schedules and HUD Handbook 2228.2, General Records Schedules.

TRAINING

Exhibit 7.1.

Obligation End Dates and Expenditure End Date

Preparing for OED (Step 2.)

- 90 Days before OED: Headquarters and Field Office monitor reporting activity.
- 60 Days before OED: Headquarters and Field Office monitor reporting activity.
- 30 Days before OED: Headquarters notifies Field Office of PHAs in danger of non-compliance.

Preparing for and Meeting EED (Step 3.)

- 90 Days before EED: Headquarters and Field Office monitor reporting activity.
- 60 Days before EED: Headquarters and Field Office monitor reporting activity.
- 30 Days before EED: Headquarters notifies Field Office of PHAs in danger of non-compliance.
- 5 Days after EED: PHA must enter all expenditures into LOCCS.

Preparing for Grant Closeout (Step 4.)

- 30 Days after EED: Headquarters starts recapture process, if necessary.

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Chapter 8. Emergency, Non-Presidentially Declared Natural Disaster, and Safety and Security Grants

8.1. Overview.

This chapter discusses the application, award, monitoring, and closeout procedures for Emergency and Non-Presidentially Declared Natural Disaster Grants, including Safety and Security Grants.

Congress annually appropriates funds for the Capital Fund, including the Emergency and Non-Presidentially Declared Natural Disaster set-aside. The Annual Appropriations Acts also permit HUD to use a portion of the Emergency and Non-Presidentially Declared Natural Disaster set-aside for safety and security funding as described in Section 8.7 below.

HUD awards Emergency and Non-Presidentially Declared Natural Disaster Grants to cover capital needs arising from emergencies and Non-Presidentially Declared Natural Disasters occurring in the same Federal Fiscal Year. For example, PHAs with capital needs arising from a Non-Presidentially Declared Natural Disaster in FFY 2015 may only receive funds from the FFY 2015 Emergency and Non-Presidentially Declared Natural Disaster set-aside. Grants are awarded on a first-come, first-served basis until the Emergency and Non-Presidentially Declared Natural Disaster set-aside funds are exhausted.

Insurance coverage, which is required by the ACC, should be a PHA's primary source of funding for repair or replacement costs associated with Emergencies and Non-Presidentially Declared Natural Disasters.

PHAs are eligible for permanent reconstruction assistance through the Federal Emergency Management Agency (FEMA) for Presidentially-Declared Natural Disasters. FEMA may also provide Emergency assistance during Non-Presidentially Declared Natural Disasters for certain activities such as debris removal, demolition of unsafe structures, and any actions necessary to reduce an immediate threat to life, property, and public health and safety.

8.2. Emergency and Non-Presidentially Declared Natural Disaster Grants.

The definitions of "Emergency" and "Non-Presidentially Declared Natural Disaster" that follow are used in determining eligibility for Emergency and Non-Presidentially Declared Natural Disaster Grants:

- Emergency: an unforeseen or unpreventable event or occurrence that poses an immediate threat to the health and safety of the residents (including fire safety) that must be corrected within one year of funding. Examples of Emergencies are boiler failure, water intrusion causing mold growth, sewer line failure, severe electrical problems . A PHA must be able to demonstrate that it has properly maintained structures and equipment.

- Non-Presidentially Declared Natural Disaster: an extraordinary event, such as an earthquake, flood, or hurricane, affecting a Public Housing Property owned and managed by a PHA, but excluding areas covered by a Presidentially-Declared emergencies and major disasters under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as those areas are eligible for funding from the Federal Management Agency (FEMA).

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- If the PHA or Field Office is unsure whether the affected Public Housing Property is located in a Presidentially-Declared disaster area, it should contact Headquarters for a determination. FEMA also provides a website that lists Presidentially-Declared disaster areas by state and county. As of the date of publication of this Guidebook, the FEMA website is located at www.fema.gov/femaNews/disasterSearch.do.

Safety and Security Grants. HUD has the discretion to set aside a portion of the Emergency and Non-Presidentially Declared Natural Disaster set-aside for assistance to a PHA to fund one-time additional measures necessary to address threats to resident safety and security caused by a Safety and Security Emergency that must be corrected within 1 year of funding.

Emergency and Non-Presidentially Declared Natural Disaster Roles		
HHQ	**FO**	**PHA**
Assign, distribute, and record funds in HUD's financial and accounting systems for the approved applications	Facilitate and assist Headquarters with receipt, review, approval, and monitoring of Emergency and Non-Presidentially Declared Natural Disaster Grants	Assess the needed work items resulting from an Emergency, including a Safety and Security Emergency, or Natural Disaster and determine whether to request an Emergency or Non-Presidentially Declared Natural Disaster Grant
Develop policies and procedures for distributing funds for the Emergency and Non-Presidentially Declared Natural Disaster Grants	Review application for completeness, eligibility, and appropriateness of proposed costs	Work with the Field Office to prepare an application that complies with HUD requirements
Oversee and monitor the submission, review, and approval of grant applications	Upon receipt of a complete application, stamp date. Incomplete applications are not dated until all necessary information is received	Submit complete application to the Field Office and respond to any requests for additional information
Determine whether a PHA's request meets the requirements for Emergency or Non-Presidentially Declared Natural Disaster	Forward memo of recommendation (approve or reject), signed by Field Office Director to Headquarters	Ensure that the environmental review is complete under 24 CFR Part 58 or request that HUD complete an environmental review under 24 CFR Part 50, as both are further described in Chapter 6
Approve the request subject to the availability of funds in the Emergency and Non-	Coordinate Headquarters review for PHA and forward any responses from PHA to Headquarters	Upon approval of an Emergency and Non-Presidentially Declared Natural Disaster Grant application,

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Emergency and Non-Presidentially Declared Natural Disaster Roles		
HHQ	**FO**	**PHA**
Presidentially Declared Natural Disaster set-aside, in the order in which requests are received and are determined approvable	Countersign the 3 copies of the CF ACC Amendment executed by the PHA, or in any other method as prescribed by HUD	sign and date three copies of the issued CF ACC Amendment and return the copies to the Field Office by the date indicated in the approval letter
Issue an approval letter and three copies of the CF ACC Amendment, or in any other method as prescribed by HUD	Confirm that it has on file, or the PHA submits, evidence of current (i.e., have not expired and will not expire during the use term associated with the use of the CF grant) and effective (i.e., no liens or encumbrances prior to the Declarations of Trust (DOTs) with a remaining term of 20 years for the public housing properties covered by the grant within 60 days of grant approval. Newly recorded Declarations of Trust must use the HUD form having a 20-year term	Within 60 days of grant approval, submit to the Field Office evidence of current and effective Declarations of Trust (DOTs) with a remaining term of 20 years for the public housing properties covered by the grant. Newly recorded Declarations of Trust must use the HUD form having a 20-year term
Upon request from a PHA or Field Office, identify whether the PHA is located in a presidentially-declared disaster area	Monitor the obligation and expenditure of grant funds against the applicable deadlines in LOCCS	Obligate and expend grant funds within required statutory and regulatory timelines
	Monitor Emergency and Non-Presidentially Declared Natural Disaster Grants through closeout	
	Ensure proper grant closeout.	Submit grant closeout documents to the Field Office

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8.3. Eligible and Ineligible Uses: Emergency and Non-Presidentially Declared Natural Disaster Grants

The following table describes eligible and ineligible uses for Emergency and Non-Presidentially Declared Natural Disaster grants:

Eligible Uses for Emergency and Non-Presidentially Declared Natural Disaster Grants	Ineligible Uses for Emergency and Non-Presidentially Declared Natural Disaster Grants
Costs associated with the repair or replacement of a Public Housing Project only if the Public Housing Project was damaged as a result of an Emergency or Non-Presidentially Declared Natural Disaster.	The cost (including labor, material, supplies and equipment used by PHA personnel) of **routine and preventive maintenance,** including such as routine unit turnaround, janitorial services, elevator service, extermination of rodents and household pests, and rubbish and garbage collection.
	Transfers to Operations. Operations costs are not capital needs. In addition, if a PHA routinely transfers the maximum amount of Capital Funds to operations and finds itself in need of an Emergency and Non-Presidentially Declared Natural Disaster Grant, it should alter its policies to convert a lower percentage of Capital Funds to operations to avoid foreseeable, self-created emergencies that do not qualify for an Emergency and Non-Presidentially Declared Natural Disaster Grant.
Relocation and the cost to provide temporary housing to public housing residents until public housing units can be repaired can be covered by the Emergency and Non-Presidentially Declared Natural Disaster Grant (such as hotel, moving van rental, temporary storage, boxes, .) (BLI 1495). *(Note: The cost to provide temporary housing to public housing residents for this purpose can also be covered by the PHA's Capital Fund grant).*	Management Improvements.
	Replacement of fixtures and appliances where the need does not arise as part of the Emergency or Non-Presidentially Declared Natural Disaster. e.g., *if a project's roof is destroyed by an Emergency but the bathrooms are intact on all floors but the top floor, a PHA cannot use an Emergency and Non-Presidentially Declared Natural Disaster Grant to replace the toilets, sinks, and tubs on lower floors, even if such items need replacement. This extra work must be funded by Capital Funds.*
	Costs for repairs of a Public Housing Project that were not due to damage from the Emergency or Non-Presidentially Declared Natural Disaster.

Contingency (BLI 1502). PHAs may budget up to 8% of the initial budget of an Emergency or Non-Presidentially Declared Natural Disaster grant for Contingency (BLI1502). Any amounts in contingency from the initial budget should be spread to the appropriate BLI (BLI 1430, 1450, 1460, .) Any amounts not expended by the PHA are to be returned to HUD;

Administrative Costs (BLI 1410). PHAs are limited to use up to 2% of the initial budget for Administrative Costs (BLI 1410). Higher percentages may be approved in very limited instances and require justification;

- The Operating Fund provides an Asset Repositioning Fee for projects and buildings within projects that are transitioned out of a PHA's inventory. This fee supplements the costs

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associated with (1) administration and management of demolition or disposition, (2) tenant relocation, and (3) minimum protection and service associated with such efforts. If available to a PHA, these funds can supplement the costs of administering an Emergency and Non-Presidentially Declared Natural Disaster Grant.

8.4. Preliminary Funding: Non-Presidentially Declared Natural Disasters Only

(Emergency Grants are Only Issued as Final Grants)

A PHA may request preliminary funding if:

- It has urgent work items needed to ensure the safety of public housing residents or to preserve the Public Housing Project; AND
- The PHA has not yet compiled all information needed for an application, such as a detailed third-party damage assessment and/or the amounts of other reimbursements such as insurance proceeds or state or local funds.

(Note: Examples of urgent work items include shoring up buildings to prevent collapse after an earthquake, relocating residents from uninhabitable units, temporary covers to damaged leaking roofs to prevent water damage to unit interiors .)

The request for preliminary disaster funding should reasonably identify damage caused by the Non-Presidentially Declared Natural Disaster and the costs necessary for the protection of the public housing residents and the immediate preservation of the Public Housing Project. The request for preliminary funding must be submitted to the Public Housing Director of the Field Office as soon as the above information is known.

A PHA that submits a preliminary disaster funding application must also submit all of the remaining application materials (for example, a third party damage assessment) once materials are prepared pursuant to Section 8.5.

Determining Which Type of Disaster Application to Submit	
Preliminary Disaster Application	Final Disaster Application
Damages pose immediate threat to resident health and safety; and/or	No immediate threat to resident health and safety; and
Immediate repairs required to preserve the property; and	No immediate repairs required to preserve the property; and
No third-party cost estimate; Have initial cost estimate (not detailed); and/or	Detailed, independent third-party cost estimate; and
Other sources of funds not known (state funds, insurance proceeds, FEMA)	Other sources of funds are known

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8.5. Emergency and Non-Presidentially Declared Natural Disaster Grant Applications

In order to submit an application for an Emergency and Non-Presidentially Declared Natural Disaster Grant (or a final application if a Preliminary Non-Presidentially Declared Natural Disaster Grant application was filed pursuant to Section 8.4), a PHA should submit the following items to the Field Office's Public Housing Director:

- Transmittal letter from the PHA submitting the application;
- Budget and P&E Report in the forms required by HUD for the requested funds;
- Detailed narrative that identifies:
    - The Public Housing Project(s) affected by the Non-Presidentially Declared Natural Disaster or Emergency;
    - For Emergencies, the conditions that present an unforeseen or unpreventable threat to the health, life, or safety of residents;
    - For Non-Presidentially Declared Natural Disasters, the name (if applicable), date, and a description of the Non-Presidentially Declared Natural Disaster (e.g., hurricane or tornado);
    - Damage caused by the Non-Presidentially Declared Natural Disaster and the costs necessary for the immediate preservation of Public Housing Property and the protection of public housing residents (applies to a preliminary funding application only);
    - Activities to be undertaken to correct the Emergency or the conditions caused by the Non-Presidentially Declared Natural Disaster and the estimated cost;
    - Sources of available funds (e.g., insurance proceeds, unobligated Capital Funds, other federal or state assistance). If the amount of other funds is not available for a preliminary funding application, the PHA is required to submit this information along with the independent third-party damage assessment in order to finalize the grant application;
    - Demonstration that without the requested Emergency and Non-Presidentially Declared Natural Disaster Grant funds, the PHA does not have adequate funds available to correct the conditions caused by the Emergency or Non-Presidentially Declared Natural Disaster; and
    - Any other materials required by HUD.
- An independent third-party damage assessment (for a preliminary funding application, this assessment will be submitted when it is prepared);

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- Certification for Contracts, Grants, Loans and Cooperative Agreements;
- Standard Form (SF)-LLL, Disclosure of Lobbying Activities;
- PHA Certifications of Compliance with the PHA Plans and Related Regulations for non-Qualified PHAs or Civil Rights Certification for Qualified PHAs;
- Written statement or letter from the PHA's insurance company attesting that the insurance company will not approve claims for any of the damage described in the PHA's narrative. If the insurance company is approving claims for a portion of the damage, the PHA must submit a written statement or letter from the insurance company certifying the amount of insurance proceeds that will be paid out and the damage for which these claims are being paid; and
- Statement of PHA certifying that it has exhausted its Capital Funds or has committed those funds to other public housing activities or capital improvements.

8.6. Managing the Emergency and Non-Presidentially Declared Natural Disaster Grant

The Field Office will have primary responsibility for monitoring compliance, completion, and closeout of the grant. The Field Office will be responsible for taking sanctions below. Headquarters will also monitor and provide guidance to the Field Office when necessary.

For an Emergency grant, a PHA has 12 months to obligate 90% of the grant and 48 months to expend 100% of the grant. (Note: Headquarters recommends that the Field Office place Emergency grants on auto-review due to tight obligation and expenditure deadlines to ensure the grants will be more closely monitored.)

For a Non-Presidentially Declared Natural Disaster grant, a PHA has 24 months to obligate 90% of the grant and 48 months to expend 100% of the grant.

A PHA may request an extension for its Obligation End Date. An extension request should be managed in the same manner as a regular Capital Fund grant, as further described in Chapter 7.

Penalties for Noncompliance.

If a PHA fails to obligate 90% of an Emergency and Non-Presidentially Declared Natural Disaster Grant by the OED, HUD will recapture the unobligated portion of the grant.

- The Field Office will send an ACC Amendment to the PHA to recapture the portion of the grant that the PHA failed to obligate by the OED.
- Upon receipt of the executed ACC from the PHA, the Field Office will initiate recapture of the balance of the unobligated funds in LOCCS.

If a PHA fails to disburse 100% of an Emergency and Non-Presidentially Declared Natural Disaster Grant by the EED, the Field Office will recapture the undisbursed portion of the grant and will send an ACC Amendment to recapture the portion of the grant that the PHA failed to expend by the EED.

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8.7. Safety and Security Grants

The requirements for Emergency Safety and Security Grants are detailed in the most recent PIH notice 2014-09 announcing the availability of such funds.

The Safety and Security Emergency that is the subject of the grant application must occur within the same Federal Fiscal Year that Safety and Security Grant funding is being requested. In the narrative, the PHA should identify each item including the number of eligible items being requested and identify where the requested eligible items will be located on the property, as well as the cost per item and any installation costs.

Given the limited availability of funding, HUD is currently only accepting one Safety and Security Grant application per PHA each Federal Fiscal Year. Safety and security funding has to date been limited to $250,000 per proposal.

The current $250,000 award limit is a maximum. A PHA's funding award has been based on a number of factors including the proposal's cost estimate, the number of units identified within the proposal, and the description of the identified safety and security need.

Currently, a PHA may submit an application in which it requests funding for one or more of its developments as long as its total request does not exceed $250,000 and a PHA is ineligible to receive safety and security funding if it has previously received safety and security funding for the same development or developments for which the funds are currently being requested.

Note: A long-standing problem does not constitute a Safety and Security Emergency because it is not unforeseen and likely to be unpreventable.

Fair Housing, Civil Rights, and Section 3 Requirements. A PHA is ineligible to receive a Safety and Security Grant if it has received any of the following charges, cause determinations, lawsuits, or letters of findings; and if the violation is not resolved to HUD's satisfaction at the time a decision is made to award funds.

- The PHA has been charged with a systemic violation of the Fair Housing Act or received a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability, or familial status;
- The PHA is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public importance pursuant to 42 U.S.C. 3614(a);
- The PHA is a defendant in any other lawsuit filed or joined by the Department of Justice alleging a pattern or practice or systemic violation of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, Title II of the Americans with Disabilities Act, or a claim under the False Claims Act related to fair housing, nondiscrimination, or civil rights generally including an alleged failure to affirmatively further fair housing;

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- The PHA has received a letter of findings identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974; or Title II of the Americans with Disabilities Act;

- The PHA has received a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of provisions of a state or local law prescribing discrimination in housing based on sexual orientation or gender identity; or

- The PHA has received a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a state or local law proscribing discrimination in housing based on lawful source of income.

PHAs are reminded that the requirements of Section 3 are applicable to funds received under this type of grant to the same extent that they would otherwise apply to Section 3-covered assistance.

8.8. Eligible and Ineligible Uses: Safety and Security Grants

Funding from a Safety and Security Grant can only be used to cover eligible expenses that address threats to resident safety and security caused by a Safety and Security Emergency. Grants must be used for Capital Fund eligible items that address an emergency capital need.

The application for a Safety and Security grant must identify one or more threats that crime and drug-related activities pose to the health and safety of the PHA's public housing residents. The capital needs request must address the identified threat that the crime and drug-related activity poses to the health and safety of a PHA's public housing residents. The intent of this grant is to provide one-time assistance for safety and security items that could not be absorbed within the PHA's annual Capital Fund grant.

Developments that have already been funded previously with a Safety and Security grant are not eligible for additional funding.

Safety and security grant funds may be used to install, repair, or replace capital needs items. (Note: Safety and Security-eligible items must meet Uniform Physical Condition Standards (UPCS) and local code requirements for egress where necessary.) The following table lists eligible and ineligible uses for Safety and Security Grants. These lists are not exhaustive and the PHA should contact the Field Office for clarification if necessary.

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Eligible Safety and Security Grant Costs	Ineligible Safety and Security Grant Costs
Security systems/cameras, including digital video recorders	Patrol cars
Fencing	Salaries for PHA staff, including security staff
Lighting systems	Security patrol contracts or payment to local law enforcement for additional security patrols
Emergency alarm systems	
Window bars	
Deadbolt locks	Administrative Costs (BLI 1410)
Doors	Transfers to Operations (BLI 1406)

8.9. Safety and Security Grant Applications

In order to submit an application for a Safety and Security Grant, a PHA should submit all required items in accordance with the most recent applicable PIH Notice. *(Note: Safety and Security Grants are also subject to environmental review requirements under 24 CFR Part 50, as further described in Chapter 6.)*

In order to submit an application for a Safety and Security Grant, a PHA should submit the following items to the Field Office's Public Housing Director:

- Transmittal letter from the PHA submitting the application.
- CFP Budget and P&E Report in the forms required by HUD for the requested funds. *Note*: The information provided should be specific to the proposed Safety and Security grant. Please do not submit information on the current CFP Budget. The proposed work does not need to be included in the PHA's 5-Year Action Plan. MTW agencies may submit a Block grant budget in lieu of the CFP Budget and P&E Report.
- Detailed narrative that identifies:
    - A thorough yet concise description and/or explanation of how the PHA has experienced an increased threat to the health and safety of its public housing residents, and
    - Crime data of the PHA's locality (i.e., town, city, parish, county, .) from a recognized source such as local law enforcement or uniform crime reports;
- At least one of the following:
    - Narrative documentation from PHA officials, Resident Advisory Boards, or PHA security personnel;

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- Narrative documentation from local community policing organizations; or
- Narrative documentation from local officials (e.g., business council executives, city council executives).

- Documented ability to partially finance the proposed project:
  - Describe the activities that will be undertaken to correct the Safety and Security Emergency and the estimated cost. Include a statement that the PHA has not previously received safety and security funding for the project or projects for which the PHA is currently requesting safety and security funding.
  - If the cost estimate exceeds the $250,000 maximum grant size, the PHA must include documents indicating other funding, including Capital Funds, that are available to cover the proposal's additional costs. Funds must be from a grant that is currently available to the PHA as of the date of application submission not for proposed funding.
- Certification for Contracts, Grants, Loans and Cooperative Agreements[3];
- Standard Form (SF)-LLL, Disclosure of Lobbying Activities;
- PHA Certifications of Compliance with the PHA Plans and Related Regulations for standard PHAs or Civil Rights Certification for Qualified PHAs;
- A statement certifying that the PHA is in compliance with the civil rights threshold requirements set forth at Section 8.7.

8.10. Obligation and Expenditure of Safety and Security Grants

The Field Office monitors the obligation and expenditure of funds against the applicable deadlines in LOCCS.

A PHA has 12 months to obligate 90% of the Safety and Security Grant and 24 months to disburse 100% of the Safety and Security Grant. It is recommended that the Field Office place Safety and Security Grants on auto-review due to the tight obligation and expenditure deadlines to ensure the grants will be more closely monitored. If the PHA receives funding in excess of the costs incurred to address the Safety and Security Emergency, the PHA must notify the Field Office and return the excess funds.

If a PHA fails to obligate 90% of a Safety and Security Grant by the OED, HUD will recapture the unobligated portion of the grant. HUD will send an ACC Amendment to the PHA to recapture the portion of the grant that the PHA failed to obligate by the obligation end date.

[3] Currently, that form is Form HUD-50071.

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If a PHA fails to disburse 100% of a Safety and Security Grant by the EED, HUD will recapture the undisbursed portion of the grant. HUD will send an amended ACC to the PHA to recapture the portion of the grant that the PHA failed to expend by the EED.

8.11. Grant Closeout for Emergency and Non-Presidentially Declared Natural Disaster Grants & Safety and Security Grants

Grant closeout should be managed in the same manner as a regular Capital Fund grant.

When all of the work identified is complete and the grant funds are fully obligated and expended, the PHA is responsible for submitting a final P&E Report and an Actual Modernization Certificate (AMCC) (currently Form HUD-53001) to the Field Office.

If the PHA receives less than $750,000 in federal funds (including federal funds not derived from HUD) in the year it received an Emergency and Non-Presidentially Declared Natural Disaster Grant or Safety and Security Grant, the Field Office may approve both forms if it believes the reports are true and accurate. See 2 CFR part 200, Subpart F.

Audit and Closeout Approval. If the PHA receives more than $750,000 in federal funds (including federal funds not derived from HUD) in the year it received an Emergency and Non-Presidentially Declared Natural Disaster Grant or Safety and Security Grant, the PHA will be required to comply with an annual audit under the Single Audit Act. See 2 CFR Part 200, Subpart F.

The PHA should notify the Field Office that the two forms were included with the other financial statements provided to its independent public auditor. The Field Office will then enter into LOCCS that the grant is in the pre-audit stage.

Once the annual audit is completed, the PHA will notify the Field Office and identify any exceptions noted, if applicable, in the audit. If there are exceptions, the PHA will be expected to make the appropriate adjustments. If there are no exceptions, Headquarters will approve the AMCC and enter into LOCCS.

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Chapter 9. Public Housing Development

This chapter provides an overview of the public housing development process and identifies general program requirements. The process described in this chapter is the method through which HUD approves all public housing development projects - whether newly constructed or acquired (with or without rehabilitation), owned by the PHA, or owned by another entity. PHAs must comply (or cause the Owner Entity and its contractors to comply) with the provisions of this chapter. It also describes the additional requirements that apply to mixed-finance public housing development (i.e., development of public housing units that will be owned in whole or in part by an entity other than a PHA). It includes the requirements for submission of a Site Acquisition Proposal, a proposal which seeks acquisition of land prior to submission of a Development Proposal, and the Development Proposal. Finally, the chapter concludes with a discussion of requirements and procedures for drawing down predevelopment and development funding and includes development proposal checklists for reference and use.

9.1. Methods of Public Housing Development.

A PHA may develop public housing through the construction of new units or through acquisition of existing housing units, which may or may not require rehabilitation. A PHA may use any generally accepted method of development including the following methods:

Method	Description
Conventional *(may be used for new construction or rehabilitation)*	• The PHA designs a project (either new construction or rehabilitation of an existing building) on land that it owns.
	• The PHA advertises for a developer via competitive bids to build or rehabilitate the property on the PHA-owned site in accordance with the PHA's designs.
	• The PHA awards the construction contract in accordance with federal procurement regulations.
	• The contractor receives progress payments from the PHA during construction or rehabilitation and a final payment upon completion of the project in accordance with the construction contract.
Turnkey *(may be used for new construction or rehabilitation)*	• The PHA selects a developer to develop a project on a site owned or to be purchased by the selected turnkey developer.
	• The Development Proposal is approved by HUD and the PHA and the selected turnkey developer execute a contract of sale and the turnkey developer builds the Project.
	• The turnkey developer finances the cost of development from its own resources.
	• Upon completion of project construction or rehabilitation in accordance with the contract of sale, the PHA purchases the property from the turnkey developer.
	• The turnkey developer only gets paid upon acceptance of the Project by the PHA. The PHA does not make progress payments.

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Method	Description
Acquisition With or Without Rehabilitation	• The PHA acquires an existing housing 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 originally 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.
	• Unless HUD determines otherwise, in its sole discretion, no certification is required for acquisition of a property that is older than 2 years or has not been rehabilitated within the last 2 years. In this case, only a Development Proposal is required.
Force Account Labor	• The PHA staff carries out new construction or rehabilitation.
	• A PHA may use Force Account Labor if the plan to use Force Account Labor is included in the PHA's Approved 5-Year Action Plan (see Chapter 6 for additional requirements)
	• HUD approval to use Force Account Labor is not required when the PHA is designated as a High Performer under PHAS at the start of development.
Mixed-Finance	• Development or modernization of public housing, where the public housing units are owned in whole or in part by an entity other than a PHA.
	• The development may involve financing from both public and private sources.
Other Methods	• PHAs may use other methods, or a hybrid method, as long as the requirements of 24 CFR 905, Subpart Fare met

9.2. Development Process Overview.

1. **Select Site.** The PHA identifies a site to be acquired (including existing housing to be brought into the Public Housing Program, which may be owned by the PHA or third parties) or a Public Housing Project to be developed or redeveloped. For turnkey projects, the site will not be identified until the PHA advertises and selects a proposal that contains a developer-selected site.

2. **Update Annual Plan and 5-Year Action Plan.** All development activities (construction, rehabilitation, acquisition, demolition, and/or disposition) undertaken by a PHA must be identified in an approved Annual Plan. If a PHA plans development activities that are not already in its approved Annual Plan, it amends the Annual Plan as soon as possible and in accordance with 24 CFR §903.21. In addition, if a PHA plans to use Capital Funds or any Secured Financing as described in Chapter 11, the PHA must also identify and provide a description of the planned activities in the 5-Year Action Plan and update such plan as necessary following the guidance in Chapter 3.

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3. **Consult with Residents.** The PHA must consult with affected residents and solicit their input with regard to the development of the Public Housing Project prior to submission of a Site Acquisition Proposal, Development Proposal, or both, to HUD. This consultation may be met through resident meetings as part of the Annual Plan or annual Capital Fund Submission, as described in further detail in Chapter 3, or by meetings convened specifically to discuss the development or acquisition.

4. **Submit Site Acquisition Proposal, if necessary.** If the PHA wishes to expend Public Housing Capital Funds to purchase vacant land, but is not yet prepared to submit a Development Proposal, it should submit a Site Acquisition Proposal pursuant to Section 9.7. The term "vacant land" includes land with dilapidated structures that will be torn down prior to development, but does not include existing housing that will be purchased and rehabilitated. As further described in Section 9.10.A, a PHA may request predevelopment funding necessary to prepare a Site Acquisition Proposal. A Site Acquisition proposal is also required if a PHA wishes to acquire land for non-development purposes, such as blight elimination or green space.

5. **Submit Development Proposal.** The PHA prepares a Development Proposal, which describes the proposed project, its financing, and compliance with regulatory requirements pursuant to Section 9.8, and submits the Development Proposal to HUD for approval. A PHA may request predevelopment funding necessary to prepare a Development Proposal.

6. **Establish Project in IMS/PIC.** Upon receipt of the Development Proposal, the PHA and Field Office must assign a project number and enter the initial project information into PIC. A target DOFA date should be established.

7. **Execute Declaration of Trust or Declaration of Restrictive Covenants.** After HUD approves the Site Acquisition Proposal and/or Development Proposal, the PHA records a Declaration of Trust or Declaration of Restrictive Covenants (for Mixed-Finance Projects only) on all property acquired and/or to be developed. If applicable, the PHA must first release the development property from the existing Declaration of Trust and ensure that the terms of any SAC disposition letter are met. If Capital Funds are to be used, the Field Office makes the funds available in LOCCS, if the funds are not already available. For other Public Housing Funds, such as HOPE VI or CNI, Headquarters makes the funds available in LOCCS.

8. **Execute Mixed-Finance ACC Amendment (for Mixed-Finance Projects only).** After HUD approves the Development Proposal for a Mixed-Finance Project, the PHA and the Field Office execute a Mixed-Finance ACC Amendment for the Project. For Non-Mixed-Finance development, execution of an ACC Amendment, is no longer necessary. The previously executed CFP/RHF Amendments, together with the IMS/PIC system approval of the buildings and units, will satisfy the requirements of 24 CFR 905.610(b).

9. **Execute Documents (for Mixed-Finance Projects only).** After HUD approves the Development Proposal, PHAs execute all other evidentiary documents and, after review and approval, HUD authorizes the expenditure of Public Housing Funds for development purposes.

10. **Establish Date of Full Availability (DOFA).** Upon completion of the Public Housing Project, the PHA will establish the DOFA and report the date to the Field Office.

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11. **Finalize Cost Certification.** After the DOFA, the PHA will submit a cost certificate on a form prescribed by HUD to HUD attesting to the actual cost of the Project that will be subject to audit.

9.3. Sources of Funding For Development.

A PHA may engage in development activities using any one or a combination of the following sources of funding:

- Capital Funds (including its subcategories RHF and DDTF);
- HOPE VI funds;
- Choice Neighborhoods Initiative (CNI) funds;
- Community Development Block Grant funds;
- HOME Investment Partnerships (HOME) funds (in accordance with the limitations described in 24 CFR 92.213);
- Proceeds from the sale of units under a homeownership program in accordance with 24 CFR Part 906;
- Proceeds resulting from the disposition of PHA-owned land or improvements from the Public Housing Program (Disposition Proceeds as described in section 18 of the 1937 Act and 24 CFR Part 970);
- Private financing used in accordance with Mixed-Finance Development;
- Capital Fund Financing Program (CFFP) proceeds;
- Proceeds resulting from an Operating Fund Financing Program (OFFP) approved by HUD pursuant to 24 CFR Part 990 or other Section 30 approval; and
- Funds available from any other eligible sources.

9.4. General Program Requirements.

A sample checklist for Field Office review of these requirements is found at Exhibit 9.3, separated for Mixed-Finance and non-Mixed-Finance Projects.

1. **New Construction Limitations.** These requirements apply to the development of public housing. Development means not only construction of new units, but also the acquisition of units (whether or not rehabilitation is needed) that will be converted to public housing. All proposed new development projects must meet both of the following requirements:

    - "Faircloth Limit" on the number of units. A PHA may not use Capital Funds or Operating Funds to develop public housing units in excess of the Faircloth Limit defined in Chapter 1. A PHA may develop public housing units in excess of the limitation, and with the approval of the Secretary, only if (1) the units are available and affordable to eligible low income families and no Capital Funds will be provided for construction, modernization,

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and operating expenses related to the new units or (2) the units are part of a Mixed-Finance Project or otherwise leverage significant non-public housing investment, and the cost of maintaining the units over their useful life is less than the estimated cost of providing tenant-based assistance under Section 8(o) of the 1937 Act.

- New Construction Cost Comparison to Existing Housing. A PHA may not construct new public housing unless the cost of construction is less than the cost of acquisition (or acquisition with rehabilitation of existing units), including the amount required to establish an up-front reserve for replacement accounts for major repairs. A PHA shall provide evidence of compliance with this requirement either by:

  - Preparing a cost comparison which confirms 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 comparable existing housing with or without rehabilitation in the same neighborhood; or

  - Providing documentation supporting the assertion that there is insufficient comparable existing housing in the neighborhood. In compiling its evidence of compliance, the PHA may rely on its own knowledge of the neighborhood any market study prepared by experienced market professionals, an assessment of comparable projects and properties on the market, or another reasonable method.

2. **Existing PHA-Owned, Non-Public Housing Properties.** Non-public housing properties that are owned by a PHA may be added to the PHA's public housing ACC by following the development procedures described in 24 CFR Part 905, Subpart F.

3. **Site and Neighborhood Standards.** Each proposed site to be newly acquired for a Public Housing Project and for construction or rehabilitation of public housing must comply with the detailed site selection standards in 24 CFR §905.602(d), which consider neighborhood amenities, safety, areas of minority concentration, fair housing, and related issues. Current public housing projects are only exempt from 24 CFR 905.602(d)(3) and (4) if one or more of the exceptions in 24 CFR 905.602(d)(5) apply.

   Compliance with site and neighborhood standards is reviewed and approved by the Field Office, Office of Public Housing, and Office of Fair Housing and Equal Opportunity, and may require significant time in some circumstances. PHAs are urged to work with the Field Office and/or Headquarters for Mixed-Finance projects, to determine the need for this review at the earliest possible date.

   PHAs should be aware that some other HUD programs, such as project-based vouchers, have similar requirements. PHAs must comply with the applicable site and neighborhood standards in 24 CFR §905.602(d) and any applicable standards for other HUD funding sources of a project.

4. **Cross-Cutting Federal Requirements.** All development activities are also subject to the federal requirements that apply to Capital Fund activities, as described in Chapter 6.

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9.5. 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. However, Mixed-Finance Projects may be 100% 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 (24 CFR 905.604(a)(3)) or PHA Affiliate (24 CFR 905.604(a)(4)), the Project is considered mixed-finance.

Key Difference from Other Public Housing Development. *If the public housing units being developed are 100% owned by the PHA, the Project is not Mixed-Finance and is not subject to the mixed-finance requirements.*

Mixed-Finance Projects are subject to all Development requirements of this Guidebook, in addition to the specific mixed-finance requirements found at 24 CFR §905.604. All HUD actions and approvals related to Mixed-Finance Development are provided by Headquarters, unless the Field Office is authorized in writing by Headquarters to carry out a specific function related to Mixed-Finance Development.

If there is a conflict between the Mixed-Finance Requirements and the other development requirements in Subpart F, the Mixed-Finance Requirements shall apply, unless Headquarters determines otherwise.

Mixed-Finance Projects must submit a Development Proposal unless otherwise specified by Headquarters.

Structure of Mixed-Finance Projects. A Mixed-Finance Project may involve new construction, acquisition with or without rehabilitation, or modernization of existing public housing units.

- Ownership. Ownership structures of Mixed-Finance Projects may take various forms. HUD has not established requirements or prohibitions for the ownership structure. Because Mixed-Finance Projects often include Low Income Housing Tax Credits, ownership entities are most commonly limited partnerships and limited liability companies. A PHA, PHA Affiliate, or PHA Instrumentality may or may not be part of the Owner Entity.

- Instrumentalities and Affiliates. In Mixed-Finance Development, PHAs often work through a PHA Affiliate or PHA Instrumentality.

    - *PHA Affiliate*. An entity, other than a PHA Instrumentality, formed by a PHA 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 a PHA Affiliate is considered Mixed-Finance Development. Affiliates must be procured.

    - *PHA Instrumentality*. An entity related to a PHA whose assets, operations, and management are legally and effectively controlled by the PHA, through which PHA

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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. A PHA Instrumentality assumes the role of the PHA and is the PHA under the Public Housing Requirements, as defined in 24CFR 905.109 and Appendix 1, for purposes of implementing public housing development activities and programs, and must abide by the Public Housing Requirements. PHA Instrumentalities must be authorized to act for and to assume such responsibilities. For purposes of development, ownership of public housing units by a PHA Instrumentality is considered Mixed-Finance Development.

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% of the total number of units in the Project. Therefore the amount of Public Housing Funds committed to the Project cannot exceed 42% of the total Project budget, unless otherwise approved by the Secretary.

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 public housing residents of the Mixed-Finance Project.

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.

Mixed-Finance Procurement. The requirements of 2 CFR §200.319(b) and 24 CFR §905.316 apply to Mixed-Finance Development, with the following exceptions:

- PHAs may select a development partner using competitive proposal procedures for qualifications-based procurement actions (i.e., a Request for Qualifications or RFQ), subject to negotiation of fair and reasonable compensation and compliance with TDC limits and other applicable cost limitations. The term "development partner" generally means a developer or owner-developer of a Mixed-Finance Project;

- An Owner Entity or developer that is competitively selected by a PHA is not normally subject to the requirements of 24 CFR Part 200. However, the Owner Entity or developer must comply with 24 CFR Part 200 if HUD determines that the PHA or a 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-

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by-case basis, exempt such an Owner Entity from the need to comply with 24 CFR Part 200 if it determines that the Owner Entity has developed an acceptable alternative procurement plan.

Refer to Section 16.6 of the Procurement Handbook for Public Housing Authorities (7460.8 rev 2), which identifies specific actions that qualify as "exercising significant functions" and others that do not.

Conceptually, an Owner Entity would be required to comply with 24 CFR Part 200 in its procurements if: (1) a PHA or a PHA Instrumentality is the managing member or general partner of the Owner Entity and (2) manages the development process.

A Mixed-Finance Project in which a PHA Instrumentality is the Owner Entity's managing member or general partner, but the development work is managed by a procured third-party developer, would not be required to comply with 24 CFR Part 200 because the PHA is not "managing" the development process.

Identity of Interest. If the Owner Entity or a 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 which shows that the identity of interest general contractor's costs are less than or equal to the independent third-party cost estimate and (3) HUD has approved the identity of interest general contractor in conjunction with HUD's approval of the Development Proposal for the Mixed-Finance Project.

To be considered independent, the cost estimator should not be working on the Project. For example, a Project architect retained by a private developer to design or oversee a Mixed-Finance Project cannot be considered independent.

To be considered third-party, the cost estimator should not be an individual employed by the PHA, any party involved in the Mixed-Finance Development, or an affiliate of any party involved in the Mixed-Finance Development. [24 CFR §905.604(i)]

Modernization DOFA. 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. [24 CFR §905.604(a)(4)]

Operating Subsidy-Only Development. Most Mixed-Finance Projects use Public Housing Funds to pay for both development and operating costs related to the public housing units. *Operating Subsidy-Only* development refers to a Mixed-Finance Project that is developed without Public Housing Capital Assistance, but for which HUD agrees to provide Operating Fund Assistance under the terms and conditions of an Operating Subsidy-Only ACC Amendment. An Operating Subsidy-Only Project is subject to the following provisions:

The newly developed public housing units will be included in the calculation of the Capital Fund formula, as further described in Chapter 4.

An ACC Amendment will be executed to include the new public housing units. The Owner Entity may not dispose of the public housing units without the prior written approval of HUD during and for 10

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years after the end of the period in which the public housing units receive Operating Fund Assistance from the PHA.

If the PHA is no longer able to provide Operating Fund Assistance to the Owner Entity, it may (on behalf of the Owner Entity) request that HUD terminate the Declaration of Trust or Declaration of Restrictive Covenants, as applicable. 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 must pay for the tenant's reasonable moving costs. This situation alone does not cause the Uniform Relocation Act to apply.

If the PHA elects in the future to use Public Housing Capital Assistance to modernize an Operating Subsidy-Only Project, the PHA must execute an ACC Amendment with a 20-year use restriction and record a Declaration of Trust or Declaration of Restrictive Covenants as described in Section 9.3. After that, 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. [24 CFR §905.604(j)]

An Operating Subsidy-Only project must comply with Public Housing Requirements.

Operating Subsidy-Only projects must follow the same approval process as other Mixed-Finance Projects. [24 CFR §905.604(k)]

Capital Fund-Only Development. Capital Fund-Only Development refers to a Mixed-Finance Project where a PHA and/or its Partners develop public housing units using Public Housing Funds for development, but for which HUD will not provide Operating Fund Assistance.

The newly developed public housing units will not be included in the calculation of the Operating Fund formula. The PHA must sign an ACC Amendment with a 40-year use restriction and record a Declaration of Trust or Declaration of Restrictive Covenants, unless the time period is reduced by the Secretary. The Owner Entity may not dispose of the Public Housing Project without the prior written approval of HUD during a 40-year period. Prior written approval consists of written approval by Headquarters.

A Capital Fund-Only Project must follow the same approval process as other Mixed-Finance Projects.

Deviation from HUD Requirements Related to Public Housing Management. Each Mixed-Finance Project must have a legal document between the PHA and the Owner Entity that requires the Owner Entity to operate a specific number of units as public housing. Usually, this requirement is found in a document called a "Regulatory & Operating Agreement." The Regulatory & Operating Agreement may include provisions that allow the Owner Entity to deviate from Public Housing Requirements related to management of the public housing units (such as rents and income eligibility), if specific HUD requirements are first met. Often, the Regulatory & Operating Agreement describes potential deviations as "Transformation."

The regulations at 24 CFR 905.604(k) sets the parameters under which such deviations may occur, including the required submission of an "Alternative Management Plan," which must be approved by

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HUD. All submissions in connection with deviation from Public Housing Requirements shall be submitted to Headquarters.

9.6. Site Acquisition Proposal

When to Submit a Site Acquisition Proposal. When a PHA decides to use Public Housing Funds to acquire vacant land (or land with existing dilapidated structures to be torn down prior to development) for the future development of new public housing units, but is not yet prepared to submit a Development Proposal, the PHA must submit a Site Acquisition Proposal to HUD for review and approval prior to acquisition.

Once the PHA finalizes its plan for development of the site, it must submit a Development Proposal to HUD for review and approval before starting development.

If a PHA proposes to acquire land using non-Public Housing Funds and the site will not be placed under an ACC, a Site Acquisition Proposal is not required. However, if the PHA intends to place the property under its ACC and/or subsequently use Public Housing Funds to maintain or redevelop the property, the PHA must complete the Environmental Review prior to acquisition. It is also recommended that the PHA complete a Site and Neighborhood Standards analysis prior to acquisition.

Where to Submit a Site Acquisition Proposal. The Site Acquisition Proposal is submitted to the Field Office. However, if the acquired land will be part of a mixed-finance development, the PHA should consult with Headquarters before proceeding with submission of a Site Acquisition Proposal.

A sample Site Acquisition Proposal Checklist is found at Exhibit 9.1.

Contents of the Site Acquisition Proposal. The Site Acquisition Proposal shall include the following:

- Justification. A justification for acquiring vacant land prior to Development Proposal submission and approval. Typically, timing is the issue. For example, a city may offer parcels for sale to a PHA to "seed" a development project. Or, a PHA may acquire scattered site properties one by one in order to develop as a unit once all parcels have been acquired.

- Description. A description of the land (i.e., proposed site and/or project) to be acquired. A PHA should provide both a narrative description of the site and a legal description of the land.

- Project description; site and neighborhood standards. Identify and describe the proposed Project, site plan and neighborhood, and provide sufficient information for HUD to determine whether the proposed site meets the site and neighborhood standards described in Section 9.5.D. PHAs may wish to provide supporting maps and description of bus routes and other public transportation options, along with social, recreational, commercial, and health facilities.

- 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. If no change in zoning is needed, the PHA may submit a confirmation letter from the zoning authority, a zoning map identifying the site, or other documentation deemed sufficient by the Field Office. If a change in zoning is needed, the PHA should provide evidence to indicate that the required rezoning will likely be obtained and will not delay the project.

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- Appraisal. An appraisal of the proposed property by an independent, state-certified appraiser showing that the purchase price of the site/property does not exceed the appraised value; however, the Field Office may approve a purchase price that exceeds the appraised value, if justified. For acquisitions that do not involve payment or involve only nominal payment, no appraisal is needed. (The URA includes appraisal and appraisal review requirements for certain acquisitions under 49 CFR Part 24 subpart B. The URA's appraisal and appraisal review requirements may differ from those required under program rules.)

- Schedule. A schedule of the activities to be carried out by the PHA. Identify any due diligence period, HUD review period, and proposed acquisition date.

- Environmental Review. A PHA must provide documentation demonstrating completion of the Environmental Review in accordance with 24 CFR Part 50 or 24 CFR Part 58 and as explained in more detail in Section 6.2, prior to acquiring any property. HUD will not approve a Site Acquisition Proposal without this documentation.

- URA Real Property Acquisition Requirements. Real property acquisitions must comply with applicable requirements of 49 CFR 24 subpart B and HUD Handbook 1378, Chapter 5.

Processing and Approval.

The Field Office shall review all Site Acquisition Proposals for compliance with Public Housing Requirements, including 24 CFR Part 905, that apply to the development of public housing and the particular project. In particular, the Field Office shall confirm that all required elements of the Site Acquisition Proposal have been provided. The Field Office may request additional information, back-up documentation or other data necessary to make a determination.

If the Field Office determines to approve the Site Acquisition Proposal, the Public Housing Director shall issue an approval letter that: (1) attaches a Declaration of Trust, (2) requires the PHA to execute and record the Declaration of Trust immediately upon purchase of the approved site, and (3) authorizes the expenditure of requested Public Housing Funds for the purchase.

The PHA shall provide the Field Office with a copy of the recorded Declaration of Trust for its records.

9.7. Development Proposal

When to Submit a Development Proposal. Before developing public housing, either through new construction or through acquisition, with or without rehabilitation, a PHA must submit a Development Proposal to HUD for approval. (*Note: Failure to obtain HUD approval of a Development Proposal before expenditure of funds other than predevelopment costs identified in 24 CFR §905.612 may result in the Public Housing Funds used in conjunction with the Project being deemed ineligible expenses and the funds being repaid to HUD.*)

Where to Submit a Development Proposal

- For non-Mixed Finance Projects, Development Proposals must be submitted to the Field Office.

- For Mixed-Finance Projects, Development Proposals must be submitted to Headquarters.

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Sample Checklist. A sample Checklist for Development Proposals (Non-Mixed-Finance) is found at Exhibit 9.2. Specific details regarding submissions for Mixed-Finance and non-Mixed-Finance Development are found in Section 9.8.

Submission Contents. The Development Proposal submitted to HUD must, at a minimum, include the following requirements. Specific details regarding Mixed-Finance and non-Mixed-Finance Development follow.

6. **Project description.** A description of the proposed Project, proposed development method; certification of compliance with public housing requirements if the Project is less than 2 years old; number and type of units (detached, semi-detached, row house, walkup or elevator) broken out by public housing units and non-public housing units if applicable; bedroom count; target population (e.g., family, elderly, persons with disabilities); and the type and size of non-dwelling space, if applicable.

    - If the Project requires a designation as elderly-only or disabled-only, a PHA must obtain separate HUD approval prior to approval of the Development Proposal. PHAs should contact the Field Office as soon as possible.

    - If the Project includes Project-Based Vouchers, the PHA must submit a separate Subsidy Layering Analysis to the Field Office for approval prior to Development Proposal approval.

    - If the Project includes demolition and/or disposition, the PHA must submit a separate demolition and/or disposition application to the HUD Special Applications Center for approval prior to Development Proposal approval.

    - If the Project involves the CFFP, OFFP, or other Section 30 programs, the PHA must submit the required documentation for these programs and secure approval prior to Development Proposal approval.

7. **Site Information.** Description of the proposed site and the surrounding neighborhood sufficient to enable HUD to determine that the proposed site meets the site and neighborhood standards described in 24 CFR §905.602(d) and Chapter 9 of this Guidebook. Discuss site and area amenities, the adequacy of public facilities, and any environmental issues.

    - For projects including acquisition, where an Acquisition Proposal has not been previously submitted, provide an independent appraisal which supports the acquisition cost.

    - Provide evidence of compliance with zoning or, if a change is needed, that the rezoning will be approved.

    - Provide an ALTA survey and title report showing clean and marketable title.

8. **Participant Description.** Identify all major participating parties and their relationship with the PHA. The term "participating party" includes any third-party funder (e.g., lender, equity

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investor, or grantor), developer, any entity having an ownership interest, land seller, private management agent, or general contractor, to the extent such parties are involved.

(Note: Engineers, attorneys, financial and development consultants, accountants, historic consultants, Section 3 consultants, social services providers, subcontractors, and similar parties are not participating parties.)

9. **Development Project schedule.** Provide a schedule for the Project's development that includes each major stage of development through and including the submission of the final project costs to HUD.
10. **Accessibility.** Schematic drawings sufficient for HUD to determine that dwelling units and other public housing facilities meet accessibility requirements specified in the design and construction standards described in 24 CFR §905.312.

    (Note: Among other requirements, a minimum of 5% of a Project's units and all common areas, including paths of egress, must be accessible to persons with mobility disabilities, and an additional 2% of the units must be accessible for individuals with hearing or vision disabilities.)

11. **Project costs.** To allow HUD to assess sources of funding and projected uses of funds, the PHA shall submit:

    - *Development Budgets*. Project budget, in the form prescribed by HUD, reflecting all construction period and permanent period sources and uses of funds (including hard and soft costs), whether or not such costs are included in the TDC calculation described in Chapter 2.

    - *Construction Period Draw Schedule*. The PHA shall submit a schedule showing the timing of each construction payment, broken down by sources of funds and uses of funds. Required for Mixed-Finance Development and any other development that includes funding other than Public Housing Capital Assistance.

    - *Independent Construction Cost Estimate or Construction Contract*. The PHA shall submit an independent construction cost estimate or the actual construction contract that supports the permanent and construction budgets.

    - *TDC calculation*. The PHA must submit a calculation of TDC and HCC using HUD required forms. The TDC Calculation is addressed in Chapter 2. TDC limitations apply only to Public Housing Capital Assistance. A PHA may use other funding sources, including disposition proceeds, which are not subject to the TDC limit in order to cover development costs that exceed the TDC or HCC limit. Such funds, however, may not be used for items that would result in substantially increased operating, maintenance, or replacement costs.

    - *Financing.* A PHA must submit a detailed narrative with a description of all financing necessary for the implementation of the project, specifying all sources and uses.

        - For Mixed-Finance Projects, should HUD determine that more detail is required, it may require submission of financing documents (e.g. loan documents,

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partnership or operating agreements, Regulatory & Operating Agreement) in draft and final form after the initial submission of the Development Proposal.

- (Note: PHAs must assure that all funds other than Public Housing Capital Assistance are irrevocably committed to the Project, in accordance with 24 CFR §905.606(a)(6)(ii)(A) and (B).)

- *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 income and expense assumptions, to assure that operating expenses do not exceed operating income. For Mixed-Finance Development, the PHA must also describe its methodology for providing and distributing Operating Fund Assistance to the Owner Entity for the public housing units.

12. **Local Cooperation Agreement and Real Estate Taxes.***For non-Mixed-Finance Projects,* a PHA shall submit either: (1) a copy of an executed Cooperation Agreement between the PHA and the taxing jurisdiction or (2) an opinion of counsel that the existing, amended, or supplementary cooperation agreement between the jurisdiction and the PHA includes the public housing units being developed.

    - *For Mixed-Finance Projects*, a PHA may submit either its exemption for public housing units from payment of taxes or a payment in lieu of taxes as evidenced by the Cooperation Agreement described above, or the PHA may elect (referred to as a Section 35(f) election) to pay real estate taxes and provide documentation from an authorized official of the local jurisdiction that the Project is consistent with the jurisdiction's Consolidated Plan (formerly known as the comprehensive housing affordability strategy). Typically, a certification from the person heading the jurisdiction's HOME and CDBG funding programs that the proposed Project is consistent with the Consolidated Plan is sufficient.

13. **Environmental requirements.** The PHA must provide evidence that the Environmental Review process has been completed in accordance with 24 CFR Part 58 or Part 50, as further described in Section 6.2 of this Guidebook. HUD will not approve a Development Proposal without the appropriate environmental approval. PHAs are advised to begin this process as early as possible, as review and processing can take several months. *(Note that if there are multiple sources of federal funding, such as CDBG or HOME, separate Environmental Reviews may be required and must be provided to HUD. PHAs should consult with the Field Office to assure all required reviews are completed.)*

14. **Market analysis.** For a Mixed-Finance Development that includes non- public housing units, the PHA must include an analysis of the projected market for the proposed Project. Unless otherwise indicated by HUD, only the executive summary of the market study needs to be submitted.

15. **Program income and fees.** The PHA must provide information identifying fees to be paid to the PHA, its Partner(s), the Owner Entity, and/or other participating parties identified by HUD (on any HUD-issued forms). In addition, the PHA must identify the proposed receipt and use of

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program income, in accordance with the definition and requirements at 24 CFR Part 200. For Mixed-Finance Projects, use the definition of "program income" provided in the exhibits to the Mixed-Finance ACC Amendment.

16. **Additional HUD-requested information.** PHAs are required to provide any additional information that HUD may need to assess the Development Proposal. PHAs are encouraged to provide a complete Development Proposal so that no additional information is necessary. When a PHA submits a Development Proposal, and subsequently places the new public housing units under the PHA's ACC, it is deemed to have certified by those executed submissions its compliance with 24 CFR 905, Subpart F.

Submission Requirements for Non-Mixed-Finance Projects. PHAs shall use any HUD-required forms developed for Development Proposals for non-Mixed Finance Projects. Until HUD forms are redesigned to comply with the 24 CFR 905, PHAs may submit a narrative, use their own forms, and adapt mixed-finance forms as they deem appropriate.

Submission Requirements for Mixed-Finance Projects

- Three-Stage Submission. PHAs typically make a three-stage submission. The first submission is the Development Proposal, using the HUD-required forms for Development Proposals for Mixed-Finance Projects. The second submission includes certain legal documents in draft form, typically called "evidentiaries," which are reviewed by Headquarters, with some documents reviewed by Field Counsel. The third submission is provided to Headquarters after financial closing and includes the final, executed version of the evidentiaries.

- Evidentiary Document Submission. As described above, for Mixed-Finance Projects, HUD requires submission of certain evidentiary documents after submission of the Development Proposal. The following evidentiaries must first be submitted in draft form for HUD review and approval prior to financial closing. After closing, final copies of the executed (and recorded, if applicable) documents must be resubmitted to HUD for approval prior to the expenditure of Public Housing Capital Assistance. The Model Documents identified below may be found on HUD's mixed-finance website. The following documents must be submitted to Headquarters:

    - Mixed-Finance ACC Amendment (HUD Model Document);
    - Declaration of Restrictive Covenants (HUD Model Document);
    - Regulatory & Operating Agreement between the PHA and the Owner Entity;
    - Ground Lease (and a Memorandum of Lease, if applicable) between the PHA and the Owner Entity, if applicable;
    - Legal opinion from PHA counsel (HUD Model Document);
    - HUD Certifications and Assurances (currently Form HUD-50151);

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- ALTA title pro forma showing Declaration of Restrictive Covenant recorded in the first priority or in the order approved by HUD (to be reviewed by Field Office General Counsel);
- ALTA survey (to be reviewed by Field Office General Counsel). (Note: The survey submitted to the Field Office should be full-sized if possible);
- Management Plan, Management Agreement, and sample Tenant Lease (to be reviewed by the Field Office); and
- Other documents as may be required by HUD.

9.8. Review of a Development Proposal

HUD shall review all Development Proposals, including evidentiaries, for Mixed-Finance Projects for compliance with Public Housing Requirements that apply to the development of public housing and the Project. HUD 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 Project is financially viable and structured so as to adequately protect the federal investment of funds in the development.

Amendments to Approved Development Proposals. HUD must approve any material change to an approved Development Proposal. HUD defines material change as:

- A change in the number of public housing units;
- An increase or decrease of more than 10% of the number of public housing bedrooms;
- An increase or decrease of more than 10% in the project cost or financing; or
- A change in the site.

Review and Approval of Development Proposals for Mixed-Finance Projects. The review process starts when the PHA makes its first submission of the Development Proposal, coupled with or closely followed by the first evidentiary submission.

17. Assignment of Project Manager. Once a Development Proposal has been submitted, a HUD Project Manager will be assigned to the project. The Project Manager will be responsible for reviewing all documentation and for working with the PHA to move the project to final approval and release of funds.

18. Project Review.

    - *Safe Harbor Standards*. The Project Manager will review the PHA's Development Proposal for compliance with Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development (revised April 9, 2003), which outlines maximum fee ranges for a number of development costs. If a Project is at or below each safe harbor standard, no further review will be required by HUD. If a Project is above a safe harbor standard in one or more areas, the PHA must demonstrate to HUD in writing that the negotiated

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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.

- *Project Review Panel*. After initial review by the Project Manager, the Project Review Panel confirms that the project meets all Public Housing Requirements and is financially viable. The Project Manager works with the PHA to prepare a submission to the Project Review Panel and to secure approval.

- *Subsidy Layering Analysis*. The Project Manager carries out a subsidy layering analysis to determine that the amount of public assistance being provided to a project is not more than necessary to make the project feasible after taking into account all the other governmental assistance. The Project Manager includes the results of that analysis in the approval letter.

- *Evidentiary Document Review*. Upon receipt from a PHA, the Project Manager will distribute draft evidentiary documents to the Office of the General Counsel (OGC) at Headquarters and the Field Counsel Office for review.

- *Field Office Review*. The Field Office will be responsible for review and approval of the Management Documents, including the Management Plan, Management Agreement, and Tenant Lease for public housing units. Approval should be provided to the Project Manager. Field Counsel will be responsible for review and approval of the survey and title pro forma/policy. Approval should be provided to the Project Manager. Prior to approval of the Development Proposal, the Field Office will work with the PHA to establish the project in IMS/PIC, including identification of a new project number and estimated DOFA date.

- *Approval of Development Proposal including Draft Evidentiary Documents*. Headquarters issues a letter approving the Development Proposal and the draft evidentiary documents. This letter also authorizes the PHA to proceed with the financial closing and attaches a Mixed-Finance ACC Amendment for execution.

  (Note: Expenditure of Public Housing Funds is not authorized until the executed evidentiary documents are submitted by the PHA and approved by HUD, with the exception of expenditure of any predevelopment funds approved by HUD.)

- *Execution of Mixed-Finance ACC Amendment*. The PHA executes the number of originals of the Mixed-Finance ACC Amendment as indicated in the approval letter, provides all copies to the Field Office Director of Public Housing for signature and also executes releases of any existing Declaration of Trust or Declaration of Restrictive Covenants or other evidentiary document.

- *Approval of Final Evidentiary Documents.* After closing, the PHA must submit to HUD for review and approval copies of the final executed and recorded evidentiary documents which were previously approved by HUD in draft form. The PHA must include with the final documents a certification stating that the documents have not been materially

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changed from the drafts previously approved by HUD or, if changes have been made, the changes must be identified. In addition, an ALTA title policy showing recordation of documents in the order approved by HUD must be submitted. HUD will issue a letter which approves the final evidentiary documents and authorizes the expenditure of Public Housing Funds, in accordance with the approved project budget.

- *DOFA*. Promptly upon achieving DOFA, the PHA must submit notification in the form required by HUD, which is currently Form HUD-52423, to the Field Office, so units will be eligible to receive Operating Fund Assistance.

- *Cost Certificate*. Within one year of Project completion, the PHA shall submit to the Field Office the Actual Development Cost Certificate (ADCC) (currently Form HUD-52427), the Development Cost Budget/Cost Statement (currently Form HUD-52484), and/or other documentation required by the Field Office.

Review and Approval of Development Proposals for Non-Mixed-Finance Projects. PHAs must submit a Development Proposal, containing the information identified in Section 9.7, to the Public Housing Director of the appropriate Field Office.

- The Field Office will assign a Project Manager.

- The Field Office Project Manager will review the Development Proposal to ensure its completeness and will work with the PHA to resolve any issues.

- The Field Office will issue a letter approving the Development Proposal and authorizing the PHA to proceed with development and expenditure of Public Housing Funds.

- The Field Office will work with the PHA to establish the project in IMS/PIC. An ACC Amendment is no longer necessary for conventional public housing development, pursuant to PIH Notice 2009-28.

- The PHA shall ensure that the DOT is recorded on the property and shall promptly submit to HUD a copy of the recorded DOT and the final title policy showing the DOT was recorded in the order approved by HUD.

- Promptly upon achieving DOFA, the PHA must submit notification in the form required by HUD (currently Form HUD-52423) to the Field Office, so units will be eligible to receive Operating Fund Assistance.

- Within one year of Project completion, the PHA shall submit the Actual Development Cost Certificate (ADCC) (currently Form HUD-52427) and the Development Cost Budget/Cost Statement (currently Form HUD-52484) to the Field Office.

9.9. Funding and Disbursements

Predevelopment Costs. After a new development Project is included in the 5-Year Action Plan approved by the PHA Board of Commissioners and HUD, a PHA may use Public Housing Capital Assistance for

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predevelopment expenses. Predevelopment funds may be expended in accordance with the following requirements:

- Predevelopment assistance may be used to pay for materials and services related to preparation of the Development Proposal and project soft costs that are Eligible Activities under 24 CFR §905.200 and Chapter 2. It may also be used to pay for eligible costs related to the demolition of units on a proposed site, as long as HUD has provided demolition approval. 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. *(Note: PHAs must comply with Environmental Review requirements prior to the use of funds for predevelopment expenses.)*

- For non-Mixed Finance Projects, PHAs may use up to 5% of the total amount of the Public Housing Funds committed to the Project to pay for eligible predevelopment costs without Field Office approval. The Field Office shall determine on a case-by-case basis whether an amount greater than 5% may be drawn down by a PHA to pay for necessary and reasonable pre-development 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% may be approved, the PHA must submit the information and documentation specified in Sections 9.7 (Site Acquisition Proposal) and/or Section 9.8 (Development Proposal), as HUD deems appropriate.

- For Mixed-Finance Developments, all funding for predevelopment costs must be reviewed and approved by Headquarters prior to expenditure. PHAs must submit a written request identifying the sources and uses of funds. The requirement to disburse funds for Mixed-Finance Projects in an approved ratio of Public Housing Funds to non-public housing funds does not apply to disbursement of predevelopment funds.

Standard Drawdown Requirements. For non-Mixed-Finance Projects, upon approval of the Development Proposal, the PHA may draw Capital Fund amounts that 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, a PHA may request funds for acquisition activities. A PHA must also maintain full documentation evidencing the need for each drawdown, including contracts, invoices, and inspection reports.

For Mixed-Finance Projects, prior to PHA expenditure of Public Housing Funds, except predevelopment funds as described above, a PHA must submit to HUD copies of final, fully executed, and, where appropriate, recorded evidentiary documents, submitted as part of the Development Proposal process for review and approval.

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 upon construction completion. The ratio does not apply during the construction period.

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Special Disbursement Requirements and Issues.

- RHF. If a PHA plans to accumulate RHF funds, as further described in Chapter 5, the Field Office must approve the RHF Plan, which details the accumulation, prior to disbursing RHF for predevelopment or development costs.

- Disposition Proceeds. If a PHA plans to use Disposition Proceeds in a Project, it must follow the requirements in the Disposition Approval and 24 CFR Part 970 and obtain the Field Office's written approval that the funds may be applied to the Project.

- RAD. The Field Office shall place in the RAD budget line item (BLI 1503 & 1504) any Capital Funds designated for use in a RAD conversion in the PHA's approved 5-Year Action Plan. Before HUD's execution of the RAD Conversion Commitment (RCC) (currently Form HUD-52624), a PHA may expend up to $100,000 in Public Housing Capital Assistance for materials and services related to proposed development and preliminary development work. Headquarters's execution of the RCC constitutes approval for the PHA to expend additional Capital Funds on predevelopment costs. Headquarters's issuance of a signed RAD Use Agreement (currently Form HUD-52625) constitutes approval for the PHA to expend any additional RAD funds authorized for development activities in the RAD Conversion Commitment. If the RCC authorizes the use of Capital Funds, including RHF, for making HAP payments, the PHA is authorized to draw down the monthly amount identified in Exhibit A to the RCC.

  As of the date of publication of this Guidebook, additional details on the use of Capital Funds in a RAD conversion may be found in Notice PIH-2012-32 (HA), REV-1.

Each Draw of Capital Funds Attests to Compliance. Each Capital Fund disbursement from HUD is deemed to be an attestation of compliance by the PHA with the requirements of the CFP Final Rule. If HUD determines that the PHA is in noncompliance with any provision of this part, the PHA may be subject to the sanctions in 24 CFR §905.804.

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Exhibit 9.1. Site Acquisition Checklist

Part I - Field Office Review Checklist per 24 CFR §§905.602, 905.606, and 905.608

PHA and code: _____
Development Name: _____
Reviewer: _____
Development Method: _____
Date Proposal Received: _____

Site Acquisition Requirements **24 CFR §905.602** **Guidebook Section 9.5**	**Yes**	**No**	**N/A**	**Comment**
Proposed Development included in Annual Plan				
5-Year Action Plan includes any proposed use of Public Housing Capital Assistance or Secured Financing. 24 CFR §905.200(a) and 905.300				
Threshold eligibility. Is the PHA proposing to buy vacant land or bring vacant land it already owns into the public housing program? If yes, continue. If not, reject and ask PHA to submit a Development Proposal. 24 CR 905.608 • Acquisition of existing housing for purchase or purchase and rehab is Development not Site Acquisition. • The term "vacant land" includes land that has dilapidated structures that will be torn down prior to development.				
Site Acquisition Proposal **24 CFR §905.608(b)** **Guidebook Section 9.7**	**Yes**	**No**	**N/A**	**Comment**
Justification. Explanation for acquiring vacant property before development proposal submission and approval. Timing issues are sufficient.				
Description. Legal and narrative descriptions of the proposed site.				
Project description; site and neighborhood standards. An identification and description of the site 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). FHEO in the Field Office or Headquarters should sign off.				
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. If no rezoning is necessary, a zoning map, survey, or letter issued by the zoning entity is sufficient.				

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Uniform Relocation Act (URA). Documentation that the PHA has complied with the applicable requirements of the URA.				
Appraisal. Appraisal prepared by an independent, state-certified appraiser. Field Office must approve any purchase price exceeding appraised value.				
Schedule. Identify any due diligence period, HUD review period, and proposed acquisition date.				
Environmental Assessment. Confirm environmental review has been appropriately completed by participating jurisdiction under Part 58 or HUD agrees to do review under Part 50.				
Title and Survey. ALTA survey and title pro forma to be reviewed by Field Counsel for accuracy and consistency of the legal description of Project among the survey, title pro forma, and Declaration of Trust. FHA title endorsements are not required.				
Approval letter by Director, Office of Public Housing, attaching Declaration of Trust (Form HUD-52190-A, for development projects).	-	-	-	Date:
Executed, Recorded Declaration of Trust returned to FO by PHA. PIH and Counsel should retain a copy.				Date:

Review Comments: _____

TRAINING

Exhibit 9.2. Development Proposal Checklist (Non-Mixed-Finance)

Part I - Field Office Review Checklist per 24 CFR §905.602, §905.606, and 905.608

PHA and code: _____
Development Name: _____
Reviewer: _____
Development Method: _____
Date Proposal Received: _____

Development Requirements not in Proposal **24 CFR §905.602** **Guidebook Section 9.5**	**Yes**	**No**	**N/A**	**Comment**
Proposed Development included in Annual Plan.				
5-Year Action Plan includes any proposed use of Public Housing Capital Assistance or secured financing. 24 CFR §905.200(a) and 905.300				
Faircloth Limit. PHAs may not exceed the number they owned, assisted, or operated on 10/1/99. Exclude from the count MF units or units not included in Capital Fund formula. 905.602(b)(1) Units in IMS/PIC: _____ (Carve outs): - _____ Prop Units: + _____ New Total: _____				Faircloth Limit: _____
Relocation. PHA has/will provide any URA relocation assistance and payments including required relocation notices to property owners and existing tenants and has a relocation plan. Submission of Development Proposal constitutes certification of compliance with URA requirements (49 CFR 24).				
Development Proposal (Not Mixed-Finance) **24 CFR §905.606(a)** **Guidebook Section 9.8**	**Yes**	**No**	**N/A**	**Comment**
Project description, including number of units.				
Development Method. Description of development method, including Force Account Labor, if any.				
New Construction Justification. Either (1) comparison of costs of new construction and acquisition in neighborhood or (2) documentation that there is insufficient existing housing to develop by acquisition.				

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Acquisition Certification. Needed only for acquisition of existing property less than 2 years old. Obtain certification required by 24 CFR §905.606(a)(1)(i).				
Target Population. Whether family, non-designated elderly, or designated elderly-only or disabled-only.				
Unit Mix. Number and Type of Unit (detached, semi-detached, row house, walkup elevator, with bedroom count, broken out by public housing v. non-public housing, if applicable).				
Non-Dwelling Space. Type and size of non-dwelling space (including any units not designated for occupancy).				
Schematic drawings of proposed building and unit plans.				
Site information. Describe proposed site and neighborhood; provide site plan and neighborhood map. Confirm compliance with Site and Neighborhood Standards under 24 CFR §905.602(d). FHEO in the Field Office or Headquarters should sign off if the site is not currently public housing.				
Participating Parties. Identify participating parties (including PHA) and their roles. Legal and business relationship between PHA and third parties.				
Development Schedule. Include each major stage of development through submission of Actual Development Cost Certificate (ADCC) to HUD. Key milestones include: relocation start and completion (if applicable), acquisition (if applicable), construction start and completion, lease-up start and completion (DOFA), start of operating fund assistance, and ADCC.				
Accessibility. Use schematic drawings and unit plans from Section 1(vii) to determine compliance with §905.312.				
Budgets: • *Sources And Uses* (including hard and soft costs) for construction period and permanent period. • *Construction period draw schedule* if funds other than Public Housing Capital Assistance are used. • Either independent cost estimate or construction contract to support hard costs.				
TDC and HCC are less than 100% of maximum.				
Operating Pro Forma. 10-year pro forma showing operating expenses do not exceed income.				

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Cooperation Agreement covering the proposed units or opinion of counsel demonstrating that CA covers proposed units (24 CFR §905.602).				
Environmental Review. PHA should (1) provide evidence that ER review has been appropriately completed by participating jurisdiction under Part 58 or (2) request that HUD review under Part 50.				
Market Analysis. Only needed if there are non-public housing units in the project.				
Program Income and Fees. Earned by both PHA, its instrumentalities, and participating parties (developer, general contractor, private management agent).				
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. If no rezoning is necessary, a zoning map, survey, or letter issued by the zoning entity is sufficient. Title and Survey**.** ALTA survey and title pro forma to be reviewed by Field Counsel for accuracy and consistency of the legal description of Project among the survey, title pro forma, and Declaration of Trust. FHA title endorsements are not required. Additional information requested by HUD				

Review Comments: _____

TRAINING

Part II - Post Development Activities by Field Office

FO Actions Immediately Prior to Issuing Approval Letter and after Issuing Approval Letter	Yes	No	N/A	Comment
Create new project number in IMS/PIC, prior to approval of Development Proposal.				
Enter Building and Unit information and target Date of Full Availability (DOFA) into IMS/PIC prior to approval of Development Proposal.				
Approval Letter by Director, Office of Public Housing, attaching Declaration of Trust (form HUD 52190-A for development projects)				
Obtain copy of executed, recorded Declaration of Trust and provide copy to Legal Department.				
FO and PHA Follow-up and Closeout Actions				
PHA submits Form HUD-52423 (DOFA) when 95% of the units are ready for occupancy to establish the DOFA Date.				
FO enters DOFA Date into IMS/PIC.				
PHA submits Actual Development Cost Certificate (ADCC) within one year of project completion. Form HUD-52427 (24 CFR §905.322(b)(i)) or HUD 52484				Date of approval:
PHA submits updated ADCC if changes recommended by its Auditor. Form HUD-52427 (24 CFR §905.322(c))				Date of approval:

TRAINING

Exhibit 9.3. Field Office Responsibilities for Mixed-Finance Projects

Part I - Field Office Review Checklist per 24 CFR §905.602 and §905.606

PHA and code: _____
Development Name: _____
Reviewer: _____
Development Method: _____
Date Proposal Received: _____

Development Requirements not in Proposal **24 CFR §905.602** **Guidebook Section 9.5** **Field Office should notify Headquarters Project Manager that all requirements are met or if there are any issues.**	**Yes**	**No**	**N/A**	**Comment**
Proposed Development included in Annual Plan.				
5-Year Action Plan includes any proposed use of Public Housing Capital Assistance or secured financing. 24 CFR §905.300.				
Faircloth Limit. PHAs may not exceed the number it owned, assisted, or operated on 10/1/99. Exclude from the count MF units or units not included in Capital Fund formula. 905.602(b)(1) Units in IMS/PIC: _____ (Carve outs): - _____ Prop Units: + _____ New Total: _____				Faircloth Limit: _____
Relocation. PHA has/will provide any URA-required notices to property owners and existing tenants and has a relocation plan. Submission of Development Proposal constitutes certification of compliance with URA. 49 CFR part 24 **IMS/PIC**. Enter Building and Unit information and target Date of Full Availability (DOFA) into IMS/PIC prior to approval of the Development Proposal.				
Development Proposal	**Yes**	**No**	**N/A**	**Comment**
Environmental Review. PHA should (1) provide evidence that ER review has been appropriately completed by participating jurisdiction under Part 58 or (2) request that HUD review under Part 50. Provide documentation of compliance to Headquarters Project Manager.				

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Site and Neighborhood Standards. Review the proposed site for compliance with 906.602(d). Notify Headquarters Project Manager of approval.				
Evidentiary Documents: provide approval of documents to Headquarter's Project Manager				
Management Documents. Review Management Plan, Management Agreement, and sample public housing tenant lease for compliance with Public Housing Requirements.				
Title and Survey. ALTA survey and title pro forma to be reviewed by Field Counsel for accuracy and consistency of the legal description of Project among the survey, title pro forma, and Declaration of Restrictive Covenants. Review any release of an existing Declaration of Trust. Declaration of Restrictive Covenants should be recorded in the order approved by HUD Headquarters Counsel.				
Closing. Upon receipt of approval letter from Headquarters				
Execute release of existing Declaration of Trust.				Date:
Countersign MF ACC Amendments. Retain one copy for office. Return remainder to PHA.				
Obtain two copies of recorded Declaration of Restrictive Covenants. Provide one to legal department.				
FO and PHA Follow-up and Closeout Actions	**Yes**	**No**	**N/A**	**Comment**
PHA submits Form HUD-52423 (DOFA) when 95% of the units are ready for occupancy to establish the DOFA Date.				
FO enters final DOFA Date into IMS/PIC.				
PHA submits Actual Development Cost Certificate (ADCC) within one year of project completion. Form HUD-52427 (24 CFR §905.322(b)(i))				Date of approval:
PHA submits updated ADCC if changes recommended by its Auditor. Form HUD-52427 (24 CFR §905.322(c))				Date of approval:

TRAINING

Chapter 10. DEMONSTRATION PROGRAMS: RAD AND MTW

This chapter explains the relationship between the Capital Fund Program and two significant demonstration programs that HUD is implementing pursuant to Congressional authorization: the Rental Assistance Demonstration (RAD) and the Moving to Work demonstration (MTW).

10.1. 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-2012-32 (HA), REV-2 (issued June 15, 2015), as may be amended (RAD Notice). As of the date of publication of this Guidebook, Congress has authorized HUD to allow PHAs to convert up to 185,000 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 as of the date of the publication of this Guidebook.

Following the approval of a RAD application, HUD issues a Commitment to Enter into a Housing Assistance Payments Contract (CHAP), which describes the terms under which HUD will enter into a HAP contract with the project owner. (For multi-phase 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.** Pursuant to the RAD Notice, PHAs may apply for an extension, up to 5 years, to the obligation end date (OED) applicable to the Capital Fund grants used in a RAD conversion. An OED extension for RAD conversion is not automatically granted; instead, PHAs should follow the OED extension request procedures described in Chapter 7. 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.

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10.2. 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 query 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 constitutes a Significant Amendment to the 5-Year Action Plan. Thus, PHAs must follow the requirements of Chapter 3 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 PCA is similar to the Physical Needs Assessment described in Chapter 3, but is not identical, and is used for a different purpose. The PCA 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 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's execution of the RCC constitutes approval for the PHA to expend additional Capital Funds on predevelopment costs.

Capital Funds Uses for RAD. During the pre-conversion period (before RAD conversion closing), the PHA has several options for use of its existing Capital Funds. PHAs may use Capital Funds pre-conversion 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

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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 amendment constitutes a Significant Amendment to the 5-Year Action Plan, the PHA must follow the requirements of Chapter 3 regarding the submission of the Significant Amendment to HUD for review and approval. If the Budget revision does not constitute a Significant Amendment, the PHA shall 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. After entry in LOCCS, the PHA may then draw down funds from BLI 1503 and 1504 for work items associated with the RAD conversion as bills become due and payable for the work items in the budget.

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.

Headquarter's 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 1-3 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; and
- 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.)

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10.3. 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; and (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.

MTW Agreements[4]. 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. As described in Chapter 2 of this Guidebook, those purposes supersede the eligible activities for Capital Funds (including RHF funds) provided in the CFP Final Rule and this Guidebook. The MTW Agreement also amends and supersedes the PHA's underlying ACC(s) with HUD and sets forth 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 set forth 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, as further described in Section 3.12.

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

[4] References to the MTW Agreements are to the form of agreement in effect at this time. Specific references may change in the future if the MTW Agreements are amended.

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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, as further described in Section 5.2 of this Guidebook, will forego 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. In place of the Capital Fund Submission described in Section 3.6, 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), as further described in Section 3.12 of this Guidebook. [24 CFR §905.300(b)(9)]

LOCCS and Disbursement of Funds. Special requirements and procedures regarding LOCCS and disbursement of Capital Funds are described in Section 3.12.

Obligation and Expenditure Deadlines. MTW does not waive the obligation end date and expenditure end date requirements, as further described in Chapter 7, 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, which are described in Chapter 7 of this Guidebook.

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Chapter 11. Security Interests and Financing Activities

The development of public housing started with funding from Congress in the 1937 Act. As a part of the development process and as a condition for receiving federal subsidies, PHAs enter into an ACC that prohibits the encumbrance of public housing property without prior written approval from HUD. The process also requires a PHA to record a Declaration of Trust (DOT) prohibiting transfer or encumbrance of public housing property without prior HUD approval. Restrictions in the ACC and the DOT effectively preclude PHAs from using the real estate as collateral for borrowed funds without HUD approval.

Because appropriations from Congress to subsidize the cost of maintenance and capital improvements remain inadequate to meet current needs, the nation has a substantial backlog of unmet modernization or replacement needs. Due to limited funding and the capital backlog, PHAs have had to develop new strategies to fund needs as supplements to the basic annual CFP grant.

Section 516 of QHWRA added Section 30, on Public Housing Mortgages and Security Interest, to the 1937 Act, which authorizes PHAs to pledge or mortgage public housing or other PHA property, subject to HUD approval. QHWRA also amended Section 9 of the 1937 Act to permit the Capital Fund Financing Program (CFFP) and Operating Fund Financing Program (OFFP).

Procedures for implementing and approving Section 30 transactions that involve Capital or Operating Funds are provided separately from the Section 30 process, also known as the Public Housing Mortgage Program (PHMP). Likewise, any security interest or mortgages on mixed-finance developments are approved as part of the overall approval of those transactions. For approval of all other transactions that result in a mortgage or security interest, the PHMP was established.

The portion of the CFP final rule addressing public housing development, including mixed-finance, is discussed in Chapter 9. This chapter discusses additional funding strategies with an emphasis on those that require HUD approvals and the related requirements to obtain those approvals.

There can be no mortgage or security interest on public housing without HUD approval as restricted by both the ACC and the DOT/DORC (which includes any asset acquired or improved with CFP assistance). In addition to mixed-finance encumbrances, Congress authorized several other ways for PHAs to encumber public housing in order to finance capital improvements, generally through the QHWRA.

For each type of financing, PHAs determine whether the financing is connected to an activity required to be included in the PHA Plan (or Annual MTW Plan, if applicable). If so, the applicable plan is updated accordingly. Once the type of financing (other than an unsecured financing) is approved, PHAs include the financing proceeds in the 5-Year Action Plan as if they were Capital Funds. If the financing proceeds are used as part of the development of public housing units, through either conventional development or mixed-finance development, the PHA submits a development proposal. HUD will issue two separate approval letters, one for the financing and another for development.

TRAINING

11.1. Capital Fund Financing Program (CFFP)(24 CFR Part 905, Subpart E)

Under CFFP, a PHA borrows private capital to finance public housing development or modernization activities using a portion of its CFP grant for debt service payments and usual and customary financing costs on the debt. With HUD's prior written approval, a PHA secures such payments by granting to the lender a security interest in its future annual Capital Fund grants (subject to appropriations).

Submission requirements: The PHA submits requests for HUD approval of CFFP transactions to (1) Director, Office of Capital Improvements, Room 4146, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington DC 20410 and (2) the Field Office. CFFP requests include the following:

- Transmittal letter signed by the PHA Executive Director (or Chief Executive Officer, if applicable) requesting approval of the CFFP submission and briefly describing:
    - proposed financing and use of CFFP Proceeds;
    - the percentage of Capital Funds to be used for debt service;
    - the percentage of the PHA's public housing units benefiting from the financing;
    - the impact of the financing upon the PHA's public housing portfolio;
    - a description of the transaction being proposed;
    - any existing financing or similar commitments of Public Housing Capital Assistance to any of the PHA's Public Housing Projects; and
    - Significant financial or legal provisions included in the CFFP Proposal, such as variable interest provisions, and providing justification for such.
- Table of contents that identifies the materials submitted as well as any omitted if the CFFP Proposal is streamlined.
- Term sheet as prescribed by HUD which describes the basic terms of the transaction and financing structure, including the proposed amount of the financing, the term, interest rates, security, and reserve requirements.
- Contact Information for all of the participating parties.
- Financing schedules that include a debt service schedule (currently Forms HUD-52846 and 52847), sources and uses schedule, and a portfolio schedule (including projections for RHF/DDTF, as appropriate) (currently Form HUD-52830), and an adequacy-of-Capital Funds schedule, in a HUD-prescribed format.
- CFFP Budget in the form required by HUD. The CFFP budget is omitted in CFFP proposals submitted in conjunction with mixed-finance activities.

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- Management assessment conducted by an independent third party, in a form and manner prescribed by HUD that evidences the PHA's capacity to undertake and administer private financing and construction or modernization of the size and type contemplated in the CFFP Proposal. This assessment is omitted in Streamlined CFFP Proposals.

- Fairness Opinion in a form and manner prescribed by HUD, from a qualified, independent, third-party financial advisor attesting that the terms and conditions of the proposed financing transaction are reasonable given current market conditions with respect to such matters as interest rate, fees, costs of issuance, call provisions, and reserve fund requirements. This opinion is omitted in Streamlined CFFP Proposals.

- Physical Needs Assessment (PNA) or green PNA if applicable following implementation of a final rule that would establish standards for green PNAs that: (1) covers the PHA's entire public housing portfolio for the term of the proposed CFFP financing; (2) takes into consideration existing needs and the life-cycle repair and replacement of major building components; (3) identifies the activity to be financed as a need; and (4) meets any other requirements set by HUD. The PNA is omitted in CFFP Proposals submitted in conjunction with Mixed-Finance Development or CFFP Proposals that size the CFFP financing based on RHF funds. As of the date of publication of this guidebook, the current form of PNA is Form HUD-52829.

- Construction management and financial controls describing how the PHA will ensure that: (1) adequate controls are in place regarding the use of the CFFP Proceeds; and (2) the improvements will be developed and completed in a timely manner consistent with the contract documents. Such plan shall contain protocols and financial control mechanisms that address the design of the improvements, construction inspections, construction draws, and requisition approval checks and balances. This plan is omitted from Streamlined CFFP Proposals. A PHA that is designated as "troubled" under PHAS, or other PHAs as determined by HUD, may be required to institute risk mitigation measures to ensure that the funds are used properly and for the purposes intended.

- Financing documents as a complete set of the legal documents that the PHA will execute in connection with the CFFP transaction, which documents comply with CFFP program requirements and the legal requirements in Section 11.3.G. HUD will not review preliminary documents that are still under negotiation. The legal documents are to be submitted only after they have been negotiated and agreed upon by the parties to the transaction. After HUD approval, the PHA must submit to Headquarters a final closing binder after these financing documents have been executed by the parties, together with a certification that the changes requested by HUD have been made and that no other substantive changes to the submissions have been made since they were last approved by HUD.

- DOT/DORC requirements as evidence that all of the PHA's public housing projects have a current and effective DOT (for public housing) or DORC (for mixed-finance development) recorded in first position. Such Declarations must cover the term of CFFP financing for any public housing projects to receive CFFP Proceeds and such Declarations must be the first liens or encumbrances on the property (declarations cannot be secondary restrictions).

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- If it has not already done, PHAs also submit a certification of PHA counsel that each DOT or DORC is recorded in first position and will be effective for the term of the CFFP financing. If the PHA's counsel is unwilling to offer such a certification, the PHA may submit a title report demonstrating the same, along with a certification from the PHA that such Declarations and the title report cover all properties in their public housing portfolio.

- If the CFFP is combined with mixed-finance development, no submission is required for the development project receiving CFFP proceeds. *Note: The CFFP component will still have to have its own separate submission, which is distinct from the submission to OPHI for a mixed finance development.*

- Board resolution by the PHA Board of Commissioners that authorizes the PHA to undertake the loan up to a specified amount, provide all Security Interests required by the loan, and repay the loan with Capital Funds (including RHF/DDTF funds, when applicable) as required by the financing documents; and authorizes the Executive Director or other executive staff to negotiate and enter into all legal documents required as part of the transaction.

- Counsel's opinion to the PHA which opines that the PHA has the authority to enter into the transaction and affirms that the transaction complies with public housing requirements.

- General Depository Agreement (HUD 51999) and ACC (HUD 53012)) that will cover the CFFP Proceeds.

- Other documents as required by HUD.

There are two types of streamlined CFFP proposals; basic and additional. To be eligible for basic streamlining, the PHA qualifies based on PHAS and borrowing levels. Under the basic type, the PHA qualifies as a standard performer and has a cumulative CFFP borrowing less than $2 million or as a high performer under PHAS with a cumulative CFFP borrowing less than $20 million. To qualify for the second type with additional streamlining, the two allowable transaction options are to propose using CFFP proceeds in a mixed-finance transaction or propose to use only RHF funds for debt service.

Type 1 - Basic Streamlining: PHAs meeting the eligibility for basic streamlining may omit from their CFFP Proposal the following documents:

1. A third-party management assessment;
2. A third-party fairness opinion;
3. An assurance of financial controls and construction management under Section 11.3.E.10.

Type 2 - Additional Streamlining: CFFP Proposals that meet the criteria for basic streamlining and use CFFP proceeds as part of a mixed-finance proposal or size their financing based upon only projected RHF grants may omit the following additional items from their CFFP Proposal:

1. PNA;
2. CFFP Budget;
3. Reporting to the Field Office; and
4. DORC for the Mixed-Finance Project (Note: DOTs or DORCs are required for the remainder of the PHA's portfolio.)

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If HUD determines that interest or other costs do not appear to meet industry norms, or other aspects of the proposal present atypical risks, HUD retains the discretion to require additional assessments, opinions, or controls, or to return the proposal.

The financing documents include the following, as applicable:

1. Legal documents identifying the nature and extent of any security being provided, as well as the relative priority position of any security interest (e.g., first lien position, second lien position).

2. All financing documents related to future year CFP amounts with a statement that pledging of funds is "subject to annual Congressional appropriations."

3. Loan terms may not be more than 20 years and must be fully amortizing in that period. Bridge loans and other short-term loans are permitted. Variable interest rate loans shall include an interest-rate cap, above which no public housing capital assistance may be used to pay debt service.

4. Acceleration requires HUD approval. Unless otherwise approved by HUD, the financing documents stipulate that HUD approval is required before a lender may accelerate a PHA's debt obligation, for default or otherwise.

5. A PHA may not pledge any public housing property (other than the Capital Fund grants pledged to CFFP repayment) unless specifically approved in writing by HUD. There are also restrictions on the pledge of Section 8 reserves by a PHA. PHAs seeking approval of a pledge of public housing property submit documentation to HUD that details the nature and priority of the pledge. Two additional legal standard clauses are :

   "The PHA's indemnification [or guaranty] is limited to eligible non-public housing assets (assets not subject to the Declaration of Trust and not acquired or merged with assets acquired with public housing funding under the United States Housing Act of 1937)."

   "The PHA has no authority to fulfill guarantees or indemnifications involving the public housing assets. Accordingly, the guarantees and indemnifications provided in this Agreement exclude: (1) any public housing project of the PHA; (2) any operating receipts of the PHA (as the term "operating receipts" is defined in the ACC); or any public housing operating reserve of the PHA that is reflected in the PHA's annual operating budget and required under the ACC. For the purposes of this provision, the term "ACC" means the Consolidated Annual Contribution Contract between HUD and the PHA, as amended from time to time, and as and to the extent applicable to the Project by operation of law or by specific amendment referring thereto."

6. CFFP transaction documents contain a mandatory redemption/prepayment provision requiring a party with legal authority over the proceeds (such as the trustee, issuer, or lender) to use unobligated proceeds to redeem/prepay the bonds/loan such that: 90% of the CFFP proceeds are obligated before the end of the second (2nd) year after closing; and 100% of the CFFP Proceeds are expended before the end of the fourth (4th) year after closing.

7. Any legal document entered into by the PHA as part of a CFFP transaction contains a conflicts clause. A suggested model is: "To the extent that any of the foregoing is in conflict with the

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requirements of the United States Housing Act of 1937, as amended, Federal regulations, and the Annual Contributions Contract, as amended, ("Federal public housing requirements"), such Federal public housing requirements shall control and govern in such instances of conflict."

Prior to submission of the CFFP Proposal, the PHA include activities to be funded by CFFP Proceeds in the PHA Plan and 5-Year Action Plan (or Annual MTW Plan, if applicable); and then submits the CFFP Proposal or, if applicable, the Streamlined CFFP Proposal.

The Field Office reviews the approved PHA Plan (or Annual MTW Plan, as applicable) to ensure activities to be funded by CFFP proceeds are included, requiring an amendment of the plan if activities are not identified. The field review ensures that each public housing project or mixed-finance project in the PHA portfolio is subject to an appropriate DOT or DORC.

If a PNA is required for the CFFP submission, the field confirms that the work financed with CFFP proceeds and described in the CFFP budget is supported by the PNA; work items are listed specifically (e.g., roof replacement, window replacement, accessibility modifications) and by development if more than one development benefits from the CFFP proceeds; the PNA includes the expected useful life of all major building systems of the Public Housing Project(s) to receive CFFP Proceeds and the potential life-cycle replacement of these systems during the term of the CFFP financing; and the submission does not contain ineligible Capital Fund items, such as Jacuzzis, pools, .

Headquarters program and legal staff review completed CFFP proposals for compliance with procedural requirements and the substantive requirements of 24 CFR Part 905, Subpart E. In HUD's discretion, the PHA modifies any of the submitted CFFP documents or HUD requires the PHA to resubmit all or any portion of the CFFP proposal to correct any identified deficiency. Headquarters coordinates as necessary with the field office. Upon determining that a proposal complies with all applicable requirements, HUD issues CFFP approval letter and approves the CFFP ACC Amendment. Approval letters for transactions that involve development proposals are conditioned on approval of the development transaction and the execution of implementing documents between the PHA and third parties, as applicable. These could include loan agreements, construction contracts .

Following receipt of Headquarters approval of the CFFP transaction, the PHA submits closing documents as directed by HUD within the time period stated in the CFFP Approval Letter, but in no case later than 120 days. If HUD sets conditions on its approval, the PHA submits closing documents within 60 days of the date that the PHA satisfies such conditions (as evidenced by documentation retained in the PHA's file and available to HUD upon request). One example would be a requirement for approval of a Development Proposal in a CFFP transaction that uses CFFP proceeds to finance a development. Failure to provide the required documents to HUD within the time frame required may result in HUD rescinding its approval.

PHAs must obtain the Field Office's written approval of changes in the CFFP Proposal, including a change in the type of activity being financed (for example, if the approved CFP financing budget contemplated the CFFP proceeds being used for modernization, but after the proposal is approved, the PHA decides instead to pursue development); a change in the project being modernized or developed with the CFFP proceeds; a reduction of 20% or more in the number of public housing units being modernized; or an increase of 20% or more of the cost of non-dwelling space.

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The PHA submits a P&E Report on a quarterly basis, except that no reporting is necessary for pending CFFP Proposals. A PHA that (1) uses CFFP Proceeds as part of a mixed-finance transaction or (2) uses the CFFP financing based only on RHF, is exempt from this requirement. The PHA includes CFFP proceeds and the activities to be funded with them in any post-closing 5-Year Action Plan as if they were Capital Funds. CFFP proceeds may be used for development or rehabilitation of public housing The PHA performs fiscal closeout on the CFFP financing in the same manner as for a Capital Fund grant closeout, as described in Chapter 7.

The Field Office annually reviews the budget to ensure Capital Funds approved for use as repayment of the CFFP financing are allocated correctly. If applicable, the field reviews P&E Reports to ensure CFFP proceeds are expended on eligible uses and within the obligation and expenditure deadlines. Construction is monitored for compliance with PNA, the plan for financial controls and construction management, and any work items described in the 5-Year Action Plan. If any amendments are approved, copies are transmitted to Headquarters. Field perform fiscal closeout on the CFFP financing in the same manner as for a Capital Fund grant closeout, retaining all documentation related to the DOT or DORC.

Headquarters, in turn, makes debt service payments from Capital Funds in LOCCS directly to the lender or bond trustee, as applicable, in accordance with the CFFP approval letter and the ACC amendment; and reviews the post approval document submission as required by the CFFP approval letter.

11.2. Operating Fund Financing Program (OFFP)

OFFP applies to any financing in which a PHA uses a portion of its operating fund reserve balances to collateralize and pay debt service and customary financing costs where the financing is used for public housing development or modernization activities (including mixed-finance development) under 24 CFR Part 905. While the 1937 Act authorizes the use of Operating Funds for the repayment of debt service generally, only a pledge of operating reserves is permitted under the OFFP program. Also, there are restrictions on the pledge of Section 8 reserves by a PHA. If the public housing project is mortgaged in connection with development activities, two approvals are required; one for OFFP financing and another for development.

As an OFFP example, a PHA requests approval of a third-party loan in order to modernize or develop public housing. The PHA collateralizes the third-party loan with the Operating Fund reserves. At the completion of construction or rehabilitation, the PHA uses the Operating Fund reserves to pay the principal and interest on the loan. OFFP is authorized under Section 9(e)(1)(I) of the 1937 Act and 24 CFR Part 990 via 24 CFR §905.600(d)(8). HUD implements OFFP on a case-by-case basis; not on the basis of a formula or competitive award.

OFFP proposals require the PHA to submit a cover letter addressing the proposed financing and the intended use of OFFP proceeds that outlines:

1. Amount of the Operating Fund Reserves available, along with explanation of substantial fluctuations in reserve levels, if any;

2. Amount of the Operating Fund Reserves planned for debt service payments (principal and interest);

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3. Description of any Security Interest or other encumbrance being provided as well as the recourse the lender will have in the event of a default, if any; and

4. Description of any other OFFP financing undertaken in connection with its public housing program, including details itemized below.

In addition to the cover letter, the OFFP submission includes information demonstrating the availability of the Operating Fund reserve amounts to be used based on the PHA's most recent audited or unaudited financial statements, using the calculation of Operating Fund reserves as required by HUD. The accrual method of accounting is often used.

Additional information to be submitted is based upon the most recent 2 years of approved financial assessment submissions/PHA (FASPHA) in order to assess any fluctuations in reserve levels. HUD's review involves preparing the same spreadsheet based on FASPHA data from the most recent 2 years. PHAs include the most recent year-to-date financial documents available that support the OFFP financing limit spreadsheet, along with:

1. Debt service schedule

2. Name of the lender

3. Term of the financing

4. Principal amount of loan

5. Interest rate

6. Budget and P&E Report showing planned and actual use of the OFFP proceeds in the same manner as the PHA budgets Capital Funds.

7. Disclosure of outstanding OFFP financing by the PHA, together with:

8. Schedule detailing the terms (original principal amount, current principal outstanding, interest rate, debt service payment schedule, amount of debt service payments, source of debt service payments, Security Interest provided, and description of how proceeds were used); and

9. If a PHA has no existing OFFP financing, it should include a statement to that effect.

OFFP proposals combined with Mixed-Finance Transaction are submitted to (1) Director, Office of Urban Revitalization, Room 4138, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410 and (2) the Field Office. All other OFFP proposals are submitted to: (1) Director, Financial Management Division (FMD), Room 4204, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410 and (2) the Field Office.

Following HUD's review of the initial submission, the PHA submits the following additional documentation to complete the application package.

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1. PHA Board resolution authorizing the PHA to borrow up to a specified amount; provide all Security Interests required by the loan; and repay the loan with its Operating Fund Reserves as required by the financing documents; and the Executive Director or other executive staff to negotiate and enter into all legal documents required as part of the transaction.

2. PHA counsel's opinion, in the format required by HUD, stating that PHA has the authority to enter into the transaction and that the transaction conforms to Public Housing Requirements. The opinion must also include a statement that any public housing property that is mortgaged or otherwise encumbered as part of the OFFP has a DOT or DORC that is recorded prior (both in time and position) to the encumbrances to be recorded pursuant to the OFFP transaction, and that such DOTs or DORCs remain current and effective for the term of the financing. However, if PHA counsel is unwilling to offer such an opinion, the PHA may submit a title report, along with a certification that the DOTs and the title report cover all of public housing properties subjected to the security interest or encumbrance related to the OFFP or that will receive OFFP proceeds.

3. General Depository Agreements that cover: (1) proceeds of the OFFP transaction held by the PHA; and (2) Operating Fund Reserves collateralizing the loan. (General Depository Agreement Form HUD-51999)

4. Fairness opinion issued by an independent third party, if requested by Headquarters.

5. DOT/DORC documentation evidencing that HUD's Declaration has first priority. If the PHA is providing a security interest or other encumbrance in a public housing project as part of its OFFP, the PHA provides evidence the property is covered by a DOT (if owned by the PHA) or a DORC (if mixed-finance). Include a pro-forma title showing that an effective DOT or DORC will be filed in first position for any public housing project receiving OFFP proceeds. For OFFP transactions that are part of a mixed-finance project, the PHA does not need to provide evidence that HUD's Declaration as part of the OFFP proposal. Instead, HUD's review of declarations occurs under the mixed-finance proposal, including counsel's opinion.

6. DOTs or DORCs on the remainder of the PHA's portfolio is submitted as part of the OFFP approval process.

The PHA contacts Headquarters when the plan to do an OFFP transaction first arises to confirm program eligibility. Early and consistent communication is important. The HUD-recommended operating reserve for large PHAs is the greater of 4 months of formula expenses or $100,000 (above the amount proposed as part of an OFFP transaction) and for small PHAs at least 6 months' worth of operating reserves needs to be available.

Headquarters reviews the OFFP proposal and supplemental submissions and provides feedback to the PHA. An approval letter is issued (which is separate from an approval letter needed for development activities) along with an OFFP amendment to the ACC to be executed by the PHA and the Field Office.

The field office confirms the OFFP activity is identified in the PHA Plan. Field Counsel reviews and approves when acceptable there are DOT(s) on all of the PHA's public housing property , following submission of a counsel's opinion or owner's pro forma title policy and title report showing clean and marketable title under the standards of the American Land Title Association (ALTA). If the OFFP

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transaction is conducted in connection with mixed-finance development, the DOT is replaced by DORC. Upon receipt of two signed copies of the OFFP ACC Amendment from the PHA, the field office countersigns both, retains one original and returns the other original to the PHA.

Once construction begins, the field monitors and reviews P&E reports. After closing, the field confirms that OFFP proceeds are documented in 5-Year Action Plan and completes fiscal closeout in the same manner as a Capital Fund grant.

If development activities are planned, the PHA submits a development proposal to Headquarters in accordance with 24 CFR §905.600 and Chapter 9. The PHA makes any necessary revisions and document submissions requested by headquarter or the field office. Evidence that a DOT or DORC is in first place for all public housing projects in the PHA's portfolio is required. Upon receipt of the approval letter and OFFP ACC Amendment, the PHAs signs 3 originals and sends all three to the field office.

After closing, the PHA provides headquarters and the field with executed copies of OFFP-related transactional documents, if requested. The PHA includes expenditures of OFFP proceeds (as debt service payments) in any future 5-Year Action Plans as if the OFFP proceeds were Capital Funds. Once construction begins (if applicable), the PHA submits P&E Reports detailing the obligation and expenditure of OFFP proceeds to the field until all borrowed funds are expended and included in the audited year-end financial statement and then initiate fiscal closeout in the same manner as a CFP grant.

The PHA submits loan documents as part of the OFFP proposal. Sample OPTIONAL language by which a PHA can comply with the OFFP ACC Amendment follows:

1. Non-Recourse. "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)." (Note: Modify this language as needed to provide lenders recourse to Operating Fund Reserve funds pledged as part of the OFFP transaction.)

2. Indemnification. "The PHA's indemnification is limited to eligible non-public housing assets (assets not subject to the Declaration of Trust and not acquired or merged with assets acquired with public housing funding under the United States Housing Act of 1937)."

3. HUD Not Liable. "Loans and bonds connected with the financing activities are obligations of the PHA and are not guaranteed or insured by HUD or the U.S. Government."

11.3. Public Housing Mortgage Program (PHMP or Section 30)

This program applies to any transaction in which a PHA provides security for a loan from a third party through a mortgage on, or other security interest in, public housing property. The statutory authority for PHMP is found in section 30 of the 1937 Act.

HUD approval is required before executing a mortgage or security interest. This requirement does not apply to a property mortgaged through the mixed-finance program. If the public housing project is being mortgaged in connection with development not as mixed-finance, the PHA obtains both a PHMP approval through Headquarters and development approval through the field office.

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An example of a PHMP transaction is when a PHA receives a loan of affordable housing program funds from a Federal Home Loan Bank for a public housing project that requires a mortgage on that project. The mortgage requires repayment only if use restrictions are violated, so no debt service is paid from public housing capital assistance. A second example is a PHA undertakes an EPC financing in which the energy services company takes a lien on equipment fixed to a public housing project (e.g., a boiler or air conditioner). There are additional requirements related to EPC financing. See 24 CFR 990.185.

The PHA submits a PHMP proposal in the required format to headquarters and the field office Director of Public Housing. A PHMP proposal must include the following information:

1. Amount of financing;
2. Name of lender(s);
3. Interest rate(s);
4. Term of financing;
5. Security and/or collateral (please indicate which financing is secured by which collateral, and any cross-collateralization);
6. Recourse terms (including recourse to any cash flow or reserves);
7. Income restrictions (total number of units to which it is applicable and total number of public housing units to which it is applicable);
8. Payment terms as one or more of the following options with descriptions as needed: scheduled debt service payments, repayment only if in default, available cash flow, forgivable under the terms (recoverable grant/forgivable loan), or none;
9. Cost of issuance (fees and expenses directly associated with issuing the loan);
10. Capitalized interest (if any);
11. Debt service reserves;
12. Special provisions, including unusual loan terms or explanations of the deal's structure; and
13. Any additional information or documentation that is necessary and requested by HUD.

The PHA identifies the activity funded by the PHMP in its PHA Plan (or Annual MTW Plan, if applicable), if required by 24 CFR Part 903. Once a proposal is approved, the PHA identifies the activity funded by the OFFP Proceeds in 5-Year Action Plan if Capital Funds are used for repayment. Any use of Capital Funds for repayment is identified on the 5-Year Action Plan under debt service payment. PHAs are encouraged to contact HUD as early in the planning process as feasible;

Along with the proposal, evidentiaries are submitted consisting of any necessary documents requested by headquarters and a draft DOT, owner's pro forma title policy and full-size ALTA survey to the field counsel, copying Headquarters. Once the PHA receives an approval letter, an authorized signatory for

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the PHA executes three original ACC Amendments and returns them to the field office for countersignature. The PHA receives 2 originals once fully executed.

The PHA submits a post-closing package to Headquarters consisting of executed evidentiary documents (including the ACC Amendment) in the format required in the approval letter and a certified statement that no changes have been made to the documents since HUD's initial review and approval or, if changes have been made, identifying those changes. After closing, the P&E reports identify use of PHMP proceeds on eligible activities. For MTW PHAs, this is included in the Annual MTW Report. The PHA performs fiscal closeout on the PHMP financing in the same manner as for a CFP grant closeout.

The field office confirms that activities are identified in the approved PHA Plan (or Annual MTW Plan as applicable) or requires an amendment, if necessary. The field confirms if the proposed activity falls within the PHA's definition of significant amendment. The field continues to consult and advise headquarters upon request; field counsel reviews and approves, when acceptable, the DOT, an owner's pro forma title policy and ALTA. After the ACC amendment is issued by headquarters and signed by the PHA, the Director of Public Housing countersigns each original, retains one original. The field office provides the date and number of the ACC, reserving the amendment number. ACC Amendments amend the 1995 version of the ACC. The field office works with the PHA if a 1995 version is not already in place. A PHA must have executed the 1995 ACC prior to closing.

After closing, the field reviews financing documents as part of monitoring process; reviews the PHA's P&E reports regarding expenditure of PHMP proceeds on eligible expenses; and conducts remaining monitoring and closeout procedures in accordance with standard Capital Fund procedures.

Headquarters reviews the proposal and provides feedback to the PHA, then reviews any resubmitted or additional information provided by the PHA applicant. Headquarters decides whether to convene a project review panel to provide comments, request additional submissions and approves when acceptable, the PHA's PHMP submission. After identifying the required legal documents, typically an ACC Amendment, DOT, loan documents, and a legal opinion, Headquarters issues an approval authorizing: (1) the PHA to execute and record, if required, all legal documents in the transaction and (2) attaching an ACC Amendment. Headquarters reviews the final executed evidentiary documents and issues a post-closing approval.

Energy Performance Contracts (EPCs)

If an EPC transaction requires a Security Interest or other encumbrance on Public Housing Property, an EPC Section 30 approval is also required. The EPC Section 30 review and approval is separate from and in addition to HUD approval of EPCs and associated energy services agreements.

EPC proposals are submitted to the Field Office and the Energy Center. The Energy Center may be contacted by mail at 465 Main Street, Buffalo, NY 14203; by email at OFOEnergyCenter@hud.gov; or by phone at (716) 551-5755.

EPC Section 30 proposals are submitted to the Field Office and to Deputy Assistant Secretary for Field Operations, Room 4112, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington DC 20410.

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The PHA will receive separate approval letters for the EPC transaction and for EPC Section 30.

The following flow chart depicts the HUD review process for Section 30 transactions and EPCs:

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Section 30 Process Chart

Step 1. **PHA** Submits EPC and Section 30 Package to HUD PIH Field Office (FO) and Energy Center.

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Step 2. **FO and Energy Center** Forward Section 30 Documents to HQ Office of Field Operations (OFO-HQ)

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Step 3A. **OFO-HQ**
- Conducts Section 30 Completeness Review.
- Forwards Section 30 Documents to Field Counsel.

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Step 4. Field Counsel
- Works with PHA Counsel to Resolve Any Issues.
- Completes Field Counsel Review.
- Sends Approval Confirmation to OFO-HQ.

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Step 5. **OFO-HQ**
- Receives Email Confirmation from Field Counsel.
- Provides HQ Concurrence.
- Develops Section 30 Approval Language.
- Forwards Complete Section 30 Package to FO and Energy Center.

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Step 3B. FO and Energy Center
- Completes EPC Review.
- Prepares EPC / Section 30 Approval Package.

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Step 6. FO and Energy Center
- Receives Section 30 Package from OFO-HQ
- Prepares EPC and Section 30 Approval Package.
- FO Director Signs and Sends Approval Package to PHA.

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Step 7. **PHA** Signs EPC ACC Amendments and Returns to FO.

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Step 8. **FO** Sends Copy of Approval Letter and ACC Amendment to Energy Center and OFO-HQ.

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11.4. Capital Fund Education and Training Community Facilities (CFCF) Program

Currently, this program is not being funded through annual appropriations. Program information for 2010 and 2011 may be found in the notices of funding availability:

- HUD Fiscal Year (FY) 2010 Notice of Funding Availability (NOFA) for the Capital Fund Education and Training Community Facilities (CFCF) Program, Docket No. FR-5415-N-21.
- HUD Fiscal Year (FY) 2011 Notice of Funding Availability (NOFA) for the Capital Fund Education and Training Community Facilities (CFCF) Program, Docket No. FR-5500-N-05.

PHAs receiving CFCF grants were required to identify the funded activity in PHA Plan (or Annual MTW Plan, if applicable), if required by 24 CFR Part 903; include any Capital Funds to be used in connection with CFCF funds in 5-Year Action Plan under 24 CFR Part 905; submit an owner's pro forma title policy, ALTA survey, and a draft DOT or DORC to the Field Office for review by Field Counsel; and provide copy of the recorded DOT to Field Office.

The Field Office was responsible for confirming that activity was disclosed in the PHA Plan (or Annual MTW Plan, if applicable), and in the 5-Year Action Plan if any Capital Funds to be used in connection with CFCF; reviewing, and approving when acceptable, a DOT or DORC, an owner's pro forma title policy, and ALTA; and after closing, collect copy of DOT and review financing documents as part of monitoring process.

11.5. Capital Financing Not Secured By Public Housing Property

This section applies to any financing that is not secured by Public Housing Property, including when proceeds are used for either modernization or development of public housing (Unsecured Financing).

Examples:

- **Financing secured by non-Public Housing Property.** A PHA borrows funds to improve a Public Housing Project and mortgages non-Public Housing Property to secure the loan. Debt service is paid from the income of that non-Public Housing Property. No debt service is paid from Public Housing Capital Assistance; therefore, no HUD approval is required.
- **Financing Pledges of non-Public Housing Property**. A PHA borrows funds to purchase new cabinets for two Public Housing Projects and pledges repayment from the revenue of a project that is not public housing. No debt service is paid from Public Housing Capital Assistance; therefore, no HUD approval is required.
- **Unsecured Financing.** A PHA borrows funds to develop or modernize public housing, and provides no collateral to the loan.

In the examples above, no HUD approval is required under Section 30 of the 1937 Act or under Section 7 of the ACC. Therefore, HUD has also determined that no HUD approval is required administratively either.

All financing documents in an Unsecured Financing shall include the following non-recourse language:

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- "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)."

A PHA may also include the statement: "For the purposes of this Agreement, the term Public Housing Property means Any public housing assets and income, including among other things, any Public Housing Project (as the term "Project" is defined in the ACC between the PHA and HUD), any Operating Receipts (as the term "Operating receipts and Operating expenditures" is defined in the ACC), Public Housing Capital Funds or Operating Funds, HOPE VI or other development grants and other grants to the PHA from HUD under the 1937 Act."

All relevant financing documents shall include a conflicts provision stating that in the event of a conflict between the financing documents and Public Housing Requirements, the Public Housing Requirements prevail.

The conflicts and non-recourse provisions identified in this section are intended to help PHAs maintain compliance with Public Housing Requirements and other HUD requirements, but do not guarantee compliance. PHAs must conduct their own reviews to determine such compliance.

Fee-for-service amounts charged to Asset Management Projects (AMPs) or programs such as the Capital Fund Program, and earned by a Central Office Cost Center, are not protected by HUD-mandated non-recourse language, since such amounts are not considered Public Housing Property. PHAs may wish to negotiate broader non-recourse provisions to protect such Public Housing Property.

PHAs are responsible for determining whether the planned financing is secured by Public Housing Property. They should include activities funded by the unsecured financing in the PHA Annual Plan, or 5-Year Plan. Such activities include, but are not limited to, demolition and disposition, homeownership programs, and project-based vouchers. Qualified PHAs need only provide the disclosure in the 5-Year Plan.

PHAs may use Capital Funds and Operating Funds pay debt service on an unsecured financing only if the proceeds of the loan were for Eligible Purposes of Capital Funds or Operating Funds as described below and if the following disclosures are made:

- Capital Funds must be included in the 5-Year Action Plan, and in the PHA Annual Plan, or if Capital Funds are used for repayment of unsecured financing for Capital Fund eligible activities.
- Show expenditures as the debt service; and
- Operating Funds must be included in: a budget pursuant to 24 CFR Part 990, and the PHA's Annual Plan (or 5-Year Plan for Qualified PHAs) and Operating Funds may be used for repayment of unsecured financing for Operating Fund eligible activities.

Other than disclosures required in the PHA Annual Plan, or 5-Year Plan for Qualified PHAs, under 24 CFR Part 903 or the 5-Year Action Plan under 24 CFR Part 905, the PHA has no obligation to notify HUD or seek HUD approval.

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PHAs should use “Language for Financing Documents” in any Mortgage, deed of trust, security agreement, or other document securing a loan; retain copies of all financing and supporting documentation; and report the unsecured financings to their independent public accountant for the purpose of completing their annual audit under 2 CFR Part 200, Subpart F (codifying OMB A-133) or other audit, as applicable.

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Exhibit 11.1. HUD Review Checklist for Section 30 Proposals Related to EPC Transactions

Where any financing transaction involves a security interest or other encumbrance in public housing property, PHAs are required to obtain written approval from HUD of the security interest or encumbrance pursuant to Section 30 of the U.S. Housing Act of 1937 (1937 Act). HUD approval of Energy Performance Contracts ("EPCs") and associated Environmental Site Assessments ("ESAs") do not constitute approval of the security interest unless an approval of a security interest is specifically enumerated in the EPC approval letter.

Under some lease-purchase agreements (otherwise known as municipal leases, the typical financing structure for an EPC), ownership of the equipment may reside with the third party (e.g., a bank or ESCO). Under this scenario, where the ownership resides with a third party, a Section 30 approval is not required. Where ownership of the equipment resides with the PHA and a lien or other encumbrance exists on the equipment, or a security interest or encumbrance provided to other public housing property (real or personal), a Section 30 approval is required. HUD's Section 30 review focuses narrowly upon the security interest or encumbrance, and does not evaluate or approve the financing. PHAs are required to send a Section 30 request ("Request") to the Public Housing Field Office as part of the EPC Submission. The Public Housing Field Office staff and Field Office Counsel review the Request and, if approvable, include the EPC Section 30 approval in the EPC approval letter, and ensure that the EPC ACC Amendment to the Consolidated Annual Contributions Contract is executed by the PHA and Public Housing Field Office Director.

This checklist is divided into three parts: a Public Housing Field Office review for completeness of the PHA submission package, a Field Office Counsel review of the submitted documentation to ensure it meets the requirements of the Section 30 review guidance, and Public Housing Field Office Director review and approval of the approval letter and EPC ACC amendment. HUD Public Housing staff will work with local Field Office Counsel to complete the Section 30 review and approval process.

Public Housing Field Office staff and Field Office legal counsel responsibilities related to the review are detailed below in the checklist.

A. Public Housing Field Office Review:

Documentation completeness check prior to submission to Field Office Counsel

1. Required Documentation:

   i. ☐ Current and effective Modernization Declarations of Trust (Form HUD-52190-B) for Non-Mixed Finance public housing properties which are included in the EPC;

   OR

   ☐ Current and effective Declarations of Restrictive Covenants (DORCs) for mixed finance public housing properties which are included in the EPC.

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ii. ☐ PHA Section 30 Request describing the financing and security interest, and requesting HUD's approval of the security interest. The Request will include the following information (including attachments):

a. ☐ PHA's Legal Counsel Opinion that states that the PHA has the authority to enter into the transaction and provide the associate security interest, and that the transaction complies with the requirements of the 1937 Act, as amended, federal regulations, and the ACC, as amended. The PHA will enter into an EPC ACC Amendment as part of the EPC Section 30 approval. PHA counsel's opinion may not be conditioned without HUD HQ OGC approval, and should be clear on the face of it without reference to other documents.

b. ☐ Evidence of a PHA Board resolution that authorizes the PHA to undertake the subject EPC financing and provide all security interests associated with the EPC financing. The Board resolution must also provide authorization for the Executive Director or other executive staff to negotiate and enter into all legal documents required as part of the transaction.

c. ☐ A matrix that provides the following information for each project on which a security interest is granted.

I. Identification of the property that is being provided as security. For instance, the narrative could state "The equipment shall include: (and then list the types and numbers of equipment being secured, such as - 23 toilets, 36 HVAC units, 34 boilers, 200 windows .)."

II. Description of the Security Interest being provided

III. Identification of how/when the security interest is being released.

AND ONE OF THE FOLLOWING OPTIONS

i. ☐ Certification from PHA legal counsel that that the DOTs provided represent all of the non-mixed finance public housing properties that will be subject to the security interest or other encumbrance related to the EPC and that in each instance the Modernization DOTs are recorded prior to any security interest or other encumbrance including those that will be recorded pursuant to the EPC, and that they will be effective for the term of the financing.

OR

☐ Certification from PHA legal counsel that the DORCs provided represent all of the mixed finance public housing properties that will be subject to the security interest or other encumbrance related to the EPC and that in each instance the DORCs are recorded prior to any security interest or other encumbrance including those that will be recorded pursuant to the EPC, and they will be effective for the term of the financing.

TRAINING

ii. ☐ If the PHA Counsel is unwilling to offer the certification described in iii or iv above, the PHA may submit a Title Report showing that the DOTs or DORCs are in first position as to all encumbrances and with a certification from the PHA that the DOTs or DORCs and title report cover all public housing properties, both real and personal property, that will be subject to the security interest or encumbrance related to the EPC.

B. Field Office Counsel Review

1. ☐ Public Housing Field Office staff has forwarded PHA's Section 30 Request to Field Office Counsel, requesting its review of the documentation in accordance with program guidance. FO Counsel should contact HQ Counsel with any questions.

2. ☐ Field Office Counsel has reviewed the narrative description of the real or personal property upon which a security interest or other encumbrance will be provided and the nature of the security interest or other encumbrances. Permitted encumbrances include:

    a. The equipment being installed as part of the EPC, as well as any revenues realized from that equipment;

    b. Payments to the PHA from the ESCO;

    c. The energy incentives received by the PHA from HUD pursuant to this EPC approval.

3. ☐ Field Office Counsel has reviewed the PHA counsel legal opinion to confirm that it complies with the Energy Performance Contract ACC Amendment to the Consolidated Annual Contributions Contract.

4. ☐ Field Office Counsel has issued a memo to the Public Housing Office Director opining that the documentation provided establishes that there is an effective DOT or DORC recorded prior to any security interest or encumbrance including those associated with the EPC on each public housing (including mixed finance public housing property if applicable) property that will be subject to the EPC security interest or encumbrance.

C. Public Housing Field Office Review

5. ☐ Public Housing Field Office staff has reviewed the EPC Section 30 proposal to ensure that it is complete and consistent with the EPC.

6. ☐ Public Housing Field Office program staff has reviewed the narrative description of the security interest and encumbrances provided by Field Office counsel and confirmed that it includes only those security interests and encumbrances the Field Office intends to approve as part of the EPC. Security interests and encumbrances that may be approved as part of an EPC include only (program staff should contact OPHVP if the EPC involves security interests beyond that described below):

    a. The equipment being installed as part of the EPC, as well as any revenues realized from that equipment;

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b. Payments to the PHA from the ESCO;

c. The energy incentives received by the PHA from HUD pursuant to the EPC approval.

D. Public Housing Field Office Approval

1. ☐ Public Housing Field Office staff has incorporated the appropriate EPC Section 30 language in the EPC approval letter. The language should approve only those security interests requested by the PHA and intended to be approved by the Public Housing Field Office Director.

2. ☐ Public Housing Field Office staff has completed the template approval letter and the template EPC ACC amendment.

3. ☐ Public Housing Director has signed the approval letter and forwarded it to PHA with two unsigned copies of the EPC ACC amendment for the Executive Director's signature.

4. ☐ PHA has returned both ACC amendments with the Executive Director's signature.

5. ☐ Public Housing Director has signed the ACC amendments on behalf of HUD. One fully executed ACC amendment has been returned to the PHA, the other has been placed in the PHA's ACC amendment file. Public Housing Field Office staff shall retain all documents associated with the PHA's Section 30 review and approval.

TRAINING

Chapter 12. Compliance, Penalties and Sanctions

PHAs, owner/management entities and their partners must comply with all applicable provisions of the CFP final rule. This includes parties involved with mixed-finance projects, as public housing units owned by third parties are regulated in the same manner as public housing units owned and operated by PHAs. Execution of an ACC amendment by the PHA, completion of all submission requirements and taking possession of CFP grants from HUD are individually and collectively deemed to be the PHA's certification that it is in compliance with the CFP final rule and all other public housing program requirements. Noncompliance may subject the PHA and/or its partners to sanctions.

The CFP final rule identifies two areas of particular focus for possible sanctions: submission requirements and development requirements. For the annual Capital Fund submissions described in Chapter 3, a PHA is required to revise or correct information that is not in compliance with the CFP final rule. HUD has the authority to impose administrative sanctions until the appropriate revisions are made. However, some administrative sanctions, such as debarment, limited denial of participation, and civil money penalties cannot or should not be lifted upon correction. HUD will identify the sanctions that it imposes for submission of incorrect information.

Subsequent to approval of submissions, the PHA is required to comply with the requirements of 24 CFR Part 905, Subpart F regarding development of public housing; failure to comply with these requirements may subject the PHA, its partners and/or the owner entity to sanctions contained in 905.804. HUD may also impose sanctions for other forms of noncompliance. Specific instances in which access to Capital Funds may be subject to the sanctions of 905.804 until the PHA comes into compliance include:

1. Untimely certification of IMS/PIC data;
2. Inactive DUNS Number;
3. Failure to enact or submit a Board resolution approving 5-Year Action Plan;
4. Late Capital Fund Submissions;
5. Incomplete environmental review; and
6. Noncompliance with applicable procurement requirements.

The Field Office reviews a PHA's performance in completing work in accordance with its 5-Year Action Plan, this guidebook and the CFP final rule. The Field Office may undertake other reviews as it determines necessary. When conducting a review, the Field Office determines, at minimum, whether the PHA has carried out its activities in a timely manner and in accordance with requirements. The Field Office confirms that the PHA has not expended Capital Funds on items that were not included in an approved 5-Year action plan and that the PHA completes Capital Fund submissions in accordance with the funding timeline established each fiscal year. The Field Office checks that the PHA is within the proper cost limitations of budget line items that have cost limits (i.e. BLI 1406, 1408, and 1410).

The Field Office oversees the process to ascertain if the parties display a continuing capacity to carry out Capital Fund activities and that the PHA is on track to meet obligation and expenditure deadlines and accurately reports in a timely manner with legitimate obligating documents. Further, the field confirms the PHA's disbursed funds from LOCCS align with the expenditure percentage reported and reports in LOCCS for each grant monthly and on the OED and EED.

TRAINING

Reviews assure that required building and unit data are accurately reported for the calculation of the Capital Fund formula; that IMS/PIC data certification completed during the required timeframe. Any secured financing as described in Chapter 11 and any development or acquisition proposal as described in Chapter 9 are reviewed for compliance. Each chapter of this guidebook describes monitoring and approval responsibilities of both the Field Office and Headquarters. Guidebook users should reference the specific topic to determine applicable requirements.

If at any time, HUD finds that a PHA has failed to substantially comply with any provision of the CFP final rule, 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 in Chapter 7 (i.e. imposing a penalty of 1/12th for each month the PHA was in noncompliance with the OED on a future Capital Fund grant). Additional HUD sanctions for PHA noncompliance, whether or not related to obligation and expenditure, may include the following:

1. Issuing a corrective action order that notifies a PHA of the specific program requirements that the PHA has violated and specifying corrective actions. Any corrective action ordered by HUD then becomes a condition of the CF ACC Amendment;

2. Requiring reimbursement from non-Federal sources;

3. Limiting, withholding, reducing, recapturing, or terminating Capital Fund or Operating Fund assistance, e.g., RHF grants that fail to meet the OED or formula grants that fail to meet the EED will have the remaining balance recaptured;

4. Issuing a limited denial of participation or debarring responsible PHA officials pursuant to 2 CFR Parts 180 and 2424;

5. Withholding assistance to the PHA under Section 8 of the 1937 Act;

6. Declaring a substantial default of the ACC (see 24 CFR Part 907) with respect to some or all of the PHA's functions related to the Capital Fund; and

7. Taking any other available corrective action or sanction, as HUD deems necessary.

Before taking any of the remedies described above or which are otherwise available, the Field Office notifies the PHA in writing of the nature of its noncompliance with CFP requirements and the remedies HUD proposes to take. This notification allows the PHA, within a stated period of time, to take corrective action or to submit additional facts and data to demonstrate that the noncompliance does not exist. After review of any information submitted by the PHA, the Field Office may resolve all areas of noncompliance, resolve some areas of noncompliance but uphold others, uphold all areas of noncompliance, change the proposed remedies, or make other appropriate determinations. If no response is received from the PHA, the Field Office will proceed with the proposed remedies without further notice.

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If the PHA's response resolves all areas of noncompliance, the Field Office will notify the PHA in writing of that determination. If the PHA's response does not resolve all areas of noncompliance, the Field Office will notify the PHA in writing of its determination, the reasons for its determination, and the remedies it intends to impose. This notice will include the opportunity to submit to the Assistant Secretary for PIH additional information and data concerning the noncompliances identified by the Field Office. This information should be submitted within 30 days of the PHA's receipt of the Field Office's determination. The Assistant Secretary or a designee will review the PHA's submission and, after completion of the review, will notify the PHA in writing of HUD's final determination. The notification of final determination will contain an item-by-item response to the PHA's submission, an explanation of the basis for the determination, details of the sanctions HUD will impose, and a description of any actions that the PHA must take.

TRAINING

Appendix 1. Definitions: The following definitions apply to this guidebook:

1937 Act	The United States Housing Act of 1937 (42 U.S.C. §1437 et seq.)
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 CF ACC Amendment, a Mixed-Finance ACC Amendment, a Capital Fund Financing ACC Amendment, or another form of amendment specified by HUD.
Accessible	When used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed, or altered, can be approached, entered, and used by individuals with physical handicaps and visual and hearing impairments. The phrase accessible to and usable by is synonymous with accessible. When used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and when designed, constructed, altered, or adapted can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR §8.32 is accessible within the meaning of this Guidebook. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.
Acquisition Development	The development method that involves a purchase of existing property that requires substantial, moderate, or no repair in order to bring the property under an ACC. Any needed repair work is completed after acquisition; either by the PHA contracting to have the work done or by having the staff of the PHA perform the work. [24 CFR Section 905.600]

TRAINING

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 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); and • Cost effective energy-efficiency measures in excess of standard building codes.
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 5-Year Action Plan.
Alternative Management Entity	A receiver, private contractor, private manager, or any other entity that is under contract with a PHA, under a management agreement with a PHA, or that is otherwise duly appointed or contracted (e.g., by court order or agency action), to manage all or part of a PHA's operations.
Asset Management Handbook	The April 2007 document entitled "Changes in Financial Management and Reporting Requirements for Public Housing Agencies under the New Operating Fund Rule" that supplements the cancelled, but retained, HUD Handbook 7475.1 REV, CHG-1, as such Handbook may be amended from time to time.
Asset Management Project (AMP)	The combination for management purposes of existing public housing projects as originally identified in the PHA's ACC, into a new grouping that facilitates efficient and effective management of the units as a whole under the principles of asset management. The regrouping may involve combining two or more projects together or breaking a project or projects into smaller projects as the PHA determines is appropriate. The resulting grouping is called an AMP and is assigned a new AMP number in HUD data systems.
Capital Fund (CFP)	The fund established under Section 9(d) of the 1937 Act (42 U.S.C. §1437g(d)).

TRAINING

Capital Fund Annual Contributions Contract Amendment (CF ACC Amendment)	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 Amendment 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 Financing Program (CFFP)	A program that enables a PHA to borrow private capital to make improvements and pledge, subject to HUD's written approval and the availability of appropriations, under which a portion of its future year annual Capital Funds or Public Housing Property as security for either a bond or conventional bank loan transaction in accordance with 24 CFR §905, Subpart E.
Program 5-Year Action Plan (5-Year Action Plan)	The 5-Year Action Plan must describe the capital improvements identified in the PHA's Physical Needs Assessment and/or Energy Audit that are 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 Capital Fund Program as prescribed by HUD. In order to be entitled to Fungibility, PHAs must have an approved 5-Year Action Plan. Except for Emergency Work, a PHA shall not spend Capital Funds on any work that is not included in an approved 5-Year Action Plan and its amendments. The 5-Year Action Plan must contain a detailed budget for each FY contained in the 5-Year Action Plan. The budget portion of the 5-year action plan should be updated annually.
Capital Fund Program Fee (CFP 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 Capital Fund Program by the PHA Central Office Cost Center (COCC). These costs include duties related to general capital planning, preparing of the Annual Plan, processing of the Line of Credit Control System (LOCCS), preparing 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.
Capital Fund Submission	The annual submission to HUD of the CF ACC Amendment, budget documents, and other items, all as specified in Chapter 3
Choice Neighborhoods Initiative (CNI)	This program, a successor to HOPE VI, supports locally driven strategies to address struggling neighborhoods with distressed public or HUD-assisted housing through a comprehensive approach to neighborhood transformation.

TRAINING

Community Renewal Costs -	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 non-dwelling facilities, contingency allowance, insurance premiums, any initial operating deficit, onsite streets, onsite utilities, and other costs necessary to develop the Project that are not covered under the HCC. Public Housing Capital Assistance may be used to pay for Community Renewal Costs in an amount equivalent to the difference between the Housing Construction Costs (HCCs) paid for with Public Housing Capital Assistance and the TDC limit.
Conventional Development	The development method under which a PHA is responsible for selecting a site or property and designing the project. The PHA advertises for competitive bids to build or rehabilitate the development on the PHA-owned site and awards a construction contract in accordance with 2 CFR Part 200, Subpart D. The contractor receives progress payments from the PHA during construction or rehabilitation and a final payment upon completion of the Project in accordance with the construction contract. The Conventional Development method may be used for either new construction or rehabilitation.
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 the PHA to make payments in lieu of taxes (PILOT).
Cross-Cutting Federal Requirements	A term describing non-Capital Fund requirements which nonetheless apply, including Davis-Bacon, procurement, Uniform Relocation Assistance and Real Property Acquisition Policies (URA) Act, fair housing, .
Date of Full Availability (DOFA)	The last day of the month in which substantially all (95% or more) of the units in a Public Housing Project are available for occupancy.
Data Universal Numbering System (DUNS) Number	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.
Declaration of Restrictive Covenants (DORC)	A legal instrument that requires a PHA and the Owner Entity to develop a Mixed-Finance Project in compliance with Public Housing Requirements and restricts disposition of the property, including transferring, conveying, assigning, leasing, mortgaging, pledging, or otherwise encumbering the property.

TRAINING

Declaration of Trust (DOT)	A legal instrument that grants HUD an interest in a Public Housing Project owned by a PHA that is not a Mixed-Finance Project. It provides public notice that the property must be operated in accordance with Public Housing Requirements, including the requirement not to convey or otherwise encumber the property unless expressly authorized by federal law and/or HUD.
Demolition and Disposition Transitional Funding (DDTF)	Additional funding included in a PHA's 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 not a separate grant, but rather an add-on to the existing Capital Fund formula grant.
Development	Activities and related costs to add units to a PHA's public housing inventory, including, but not limited to, 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., non-dwelling facilities/spaces).
Disbursement End Date (DED)	The final date that a PHA may submit a voucher for disbursement of Capital Funds. (Contrast with Expenditure End Date (EED), the last day on which a PHA may pay third parties with funds drawn from LOCCS).
Disposition Approval	The demolition and disposition of public housing is authorized under Section 18 of the 1937 Act, as amended. HUD has promulgated a regulation, 24 CFR Part 970, detailing the administrative steps required to perform demolition/disposition activity in accordance with the 1937 Act. The approval process for demolition or disposition of public housing is currently managed by the Special Applications Center.
Disposition Proceeds	Proceeds received by a PHA resulting from the disposition of PHA-owned land or improvements from the public housing program.
Eligible Activities	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.
Emergency	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.
Emergency and Non-Presidentially Declared natural Disaster Grants	Grants funded from the Emergency and Non-Presidentially Declared Natural Disaster Set-Aside to cover capital needs arising from Emergencies and Non-Presidentially Declared natural Disasters occurring in the same FFY.

TRAINING

Emergency and Non-Presidentially Declared Natural Disaster Set-Aside	A Congressionally-mandated set-aside within the Capital Fund annual appropriation to create a reserve for Emergencies and Non-Presidentially Declared Natural Disasters.
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 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.
Energy Performance Contract (EPC)	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.
Evidentiary Documents or Evidentiaries	In Mixed-Finance Development transactions (discussed in Chapter 9) and security interests and financing transactions (discussed in Chapter 11), the package of legal documents, opinions, certifications, and due diligence documents that are submitted after a proposal has been reviewed and, at least preliminarily, approved.
Expenditure	Capital Funds disbursed by the PHA to pay for obligations incurred in connection with work included in a 5-Year Action Plan that has been approved by the PHA's Board of Commissioners and HUD. Total funds expended means cash actually disbursed and does not include retainage.
Expenditure End Date (EED)	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).
Faircloth Limit	The Faircloth Amendment states that HUD cannot fund the construction or operation of new public housing units with Capital Funds or Operating Funds if the construction of those units would result in a net increase over the number of public housing units the PHA owned, assisted, or operated as of October 1, 1999, subject to certain exceptions. [Section 9(g)(3) of the 1937 Act]
Federal Fiscal Year (FFY)	The Federal Fiscal Year begins each year on October 1 and ends on September 30 of the following year.
Federal Housing Administration (FHA)	The entity within HUD that provides mortgage insurance on loans made by FHA-approved lenders throughout the United States and its territories. FHA insures mortgages on single-family and multifamily homes, including manufactured homes and hospitals.

TRAINING

Field Counsel	HUD attorneys who work in individual Field Offices.
Field Office	A local office of HUD; each Field Office is managed by one of ten regional offices of HUD.
First Increment RHF	For units demolished or disposed of on or before June 30, 2012, a PHA automatically receives 5 years of RHF funding the year after units approved for demolition or disposition have been removed from the public housing inventory and the PHA reports the removal in IMS/PIC.
Force Account Labor	Labor employed directly by the PHA on either a permanent or a temporary basis.
Force Account Labor for Development	Public housing development that uses PHA staff to carry out new construction or rehabilitation.
Fungibility	As it relates to the Capital Fund Program, fungibility allows the PHA to substitute Capital Fund work items among the years within the latest approved 5-Year Action Plan without prior HUD approval.
HOPE VI	Authorized under Section 24 of the 1937 Act, this program replaced severely distressed Public Housing Projects with redesigned mixed-income housing and provided housing vouchers to enable some of the original residents to rent apartments in the private market. The final round of HOPE VI grants was made in FY 2010.
Housing Construction Cost (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.
Inventory Management System/Public Housing Information Center (IMS/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.
Large PHA	A PHA with 250 or more federal public housing units.
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. e-LOCCS is the Internet link to LOCCS data for HUD business partners.
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 to correct management deficiencies

TRAINING

Mixed-Finance Development	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% owned by the PHA, the project is not a Mixed-Finance Project.
Mixed-Finance Modernization	Use of the Mixed-Finance Development method to make capital improvements to modernize Public Housing Projects.
Mixed-Finance Project	A Public Housing Project developed by Mixed-Finance Development.
Modernization	Modernization means the following activities and items as further defined in § 905.200(b)(4-18)
Mortgage	A security agreement between a lender and a borrower in which the borrower's interest in real property is collateral for the loan. The mortgage creates a lien on the property that secures the promise to repay the loan. It also gives the lender the right to foreclose on the property if the loan obligations are not met. Depending on the state, this type of security agreement may have a different title, including Deed of Trust or Security Deed, but for the purposes of this Guidebook, the term Mortgage includes any security agreement that meets this definition.
Moving to Work (MTW)	A demonstration program that provides participating PHAs the opportunity to design and test innovative, locally-designed strategies that use federal dollars more efficiently, help residents find employment and become self-sufficient, and increase housing choices for low-income families. MTW gives PHAs exemptions from many existing public housing and voucher rules and more flexibility with how they use their federal funds.
Non-Presidentially Declared natural Disaster	An extraordinary event, such as an earthquake, flood, or hurricane, affecting the Public Housing Property owned and managed by a PHA, 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.).
Non-Qualified PHA	A PHA that does not meet the requirements for a Qualified PHA.
Non-routine Maintenance	Work items that ordinarily would be performed on a regular basis in the course of maintenance of property, but which 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.

TRAINING

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 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 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.
Obligation End Date (OED)	The date, 2 years after the HUD's execution of a particular CF ACC Amendment, on which a PHA must have obligated at least 90% of such Capital Fund grant.
Office of Capital Improvements (OCI)	The division of the Office of Public Housing Investments (OPHI), within the Office of Public and Indian Housing that administers the Capital Fund Program.
Open Grant	Any grant for which a cost certificate has not been submitted and has not reached fiscal closeout.
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.
Operating Fund Financing Program (OFFP)	A program that enables a PHA to use a portion of its Operating Fund reserve balances to collateralize financing and to pay debt service and customary financing costs where the financing is used for public housing development or modernization (including public-housing mixed-finance developments).
Operating Reserve	Operating reserve means those funds remaining from the operation of public housing for any fiscal year after eligible Operating Fund expenses are deducted from Operating Funds, tenant rents, and other "operating receipts" as such term is defined in Section 2 of the ACC.
Owner Entity	An entity that owns public housing units. In Mixed-Finance Development, the Owner Entity may be the PHA, 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 Guidebook.
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. Generally, 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 this Guidebook.
Performance &Evaluation Report (P&E)	An annual report prepared by the PHA and submitted to HUD that details the actual cost of development activities as compared to the estimated costs.

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Personal Property	Any property that is not real property or attached to real property (e.g., fixtures, bank accounts, cars and equipment)
PHA Affiliate	An entity, other than an instrumentality, formed by a PHA 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 affiliated entity but such control does not rise to the level of control to qualify the entity as a PHA Instrumentality.
PHA Instrumentality	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 Property for the purpose of carrying out public housing development functions of the PHA. A PHA 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. PHA Instrumentalities must be authorized to act for and to assume such responsibilities. For purposes of development, ownership of public housing units by a PHA Instrumentality would be considered Mixed-Finance Development.
Physical Needs Assessment (PNA)	A systematic review of all the major physical components of Public Housing 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 or Public Housing Unit	Low-income housing, and all necessary appurtenances thereto, assisted under the 1937 Act, other than Section 8, including dwelling units in a Mixed-Finance Project that are assisted by a PHA with Public Housing Funds. [42 U.S.C. 1437a]
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.
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 PHAs rated as high performers and consequences for poor performers.
Public Housing Capital Assistance	Assistance provided by HUD under the 1937 Act in connection with the development and modernization of public housing, including Capital Fund assistance provided under Section 9(d) of the 1937 Act, public housing development assistance provided under Section 5 of the 1937 Act (prior to QHWRA), 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 1937 Act, and HOPE VI grant assistance, as well as other funds deemed to be Capital Fund assistance in the future under applicable statutes, regulations, or notices.

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Public Housing Funds	Any funds provided through the Capital Fund or other public housing development sources, such as HOPE VI, CNI, public housing development funds, Public Housing Operating Funds under Section 9(e) of the 1937 Act, Disposition Proceeds that a PHA may realize under Section 18 (but subject to and to the extent consistent with Section 18 and the regulations at 24 CFR Part 970), or any other funds appropriated by Congress specifically for public housing.
Public Housing Project	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 Property	Any public housing assets and income, including among other things, any Public Housing Project (as the term "Project" is defined in the ACC between the PHA and HUD), any Operating Receipts (as the term "Operating receipts and Operating expenditures" is defined in the ACC), Public Housing Capital Funds or Operating Funds, HOPE VI or other development grants and other grants to the PHA from HUD under the 1937 Act.
Public Housing Requirements	All requirements applicable to public housing including, but not limited to, the 1937 Act; HUD regulations; the ACC, including amendments; HUD notices; and all applicable federal statutes, executive orders, and regulatory requirements, as these requirements may be amended from time to time.
Qualified PHA	A PHA that meets the following requirements: (1) The sum of the number of public housing dwelling units administered by the PHA, and the number of vouchers under Section 8(o) of the 1937 Act administered by the PHA, is 550 or fewer; and (2) the PHA is not designated under 42 U.S.C. §1437d(j)(2) as a troubled public housing agency, and does not have a failing score under the Section 8 Management Assessment Program during the prior 12 months. [24 CFR §903.3(c)]
Reasonable Cost	An amount to rehabilitate or modernize an existing structure that is not greater than 90% 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 2 CFR Part 200 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).
Rental Assistance Demonstration (RAD)	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.

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Replacement Housing Factor (RHF)	Capital Fund grants that are awarded to PHAs that have removed units from inventory for the sole purpose of developing new public housing units.
Reporting Date	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.
Routine Maintenance	Work items that do not meet the definition of non-routine maintenance.
Safety and Security Emergency -	Drug and/or criminal activity that threatens resident safety and security and must be corrected within one year of funding.
System for Award Management (SAM)	An online government-wide application that collects, validates, stores and disseminates business information about the federal government's trading partners in support of the contract award, grants and the electronic payment processes.
Safety and Security Grants	Grants funded at HUD's discretion from the Emergency and Non-Presidentially Declared Natural Disaster Set-Aside to assist PHAs with funding one-time additional measures necessary to address crime and drug-related activity.
Second Increment RHF	A second 5-year grant of RHF funding that is only available to PHAs that have met the planning, leveraging, obligation, and expenditure requirements for their First Increment RHF grants and otherwise meet the criteria for Second Increment RHF.
Section 104(d)	Section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. §5304(d)) and the implementing regulations found at 24 CFR Part 42 subpart C, Section 104(d) relocation, and one-for-one replacement housing requirements may apply when Community Development Block Grant (CDBG), Urban Development Action Grant (UDAG), and HOME Investment Partnerships (HOME) funds are used in connection with the demolition or conversion of lower-income dwelling units. *Note: UDAG is not an active program and no funds have been appropriated since 1998.*
Security Interest	A lien on personal property that secures the promise to repay a loan. A security agreement between a lender and a buyer or borrower in which the personal property is collateral for the loan. The security interest gives the lender the right to collect payment on the loan and to attach the personal property if the loan obligations are not met.
Significant Amendment or Modification	As determined by the PHA according to the criteria set forth in its 5-Year Action Plan in accordance with 24 CFR §905.300(b)(1)(iii).
Small PHA	A PHA with less than 250 federal public housing units.

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Total Development Cost (TDC)	Section 6(b) of the 1937 Act requires HUD to establish TDC limits, which represent the per-unit construction cost guidelines for a Project. The TDC limit applies to the costs of developing public housing that may be paid from Public Housing Capital Assistance. Specifics are found in 24 CFR §905.314(b) - (g).
Turnkey Development	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.
Uniform Federal Accessibility Standards (UFAS)	As defined in 24 CFR §8.32; see also 24 CFR Part 40.
Uniform Physical Condition Standards (UPCS)	Physical conditions standards for public housing and other types of HUD-assisted housing as set forth in 24 CFR Part 5, Subpart G, and 24 CFR Part 200, Subpart P.
Uniform Relocation Act (URA)	The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)-The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 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. The URA 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.

Unless otherwise noted, these definitions may be found at 24 CFR §905.108.

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Appendix 2. Eligible Activities Chart

Type	Activity	Examples
Development	Construction and acquisition with or without rehabilitation	Property Purchase
		appraisal
		survey
		Map
		Legal Costs
		Recording Costs
	Development of Mixed-Finance Projects	providing funds for eligible uses by loan
		providing funds for eligible uses by grant
		providing funds for eligible uses by lease
		providing funds for eligible uses by other legal document
	Resident consultation and meetings	
	Environmental review	
	Consultants or contractors necessary for the project	Grant Writers
		Strategic Planners
		Architects
		Engineers
		Attorneys
		Accountants
		Financial consultants
		Abatement consultants
		Section 3 consultants

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	During the Initial Operating Period, operating expenses of a Public Housing Project (or public housing units in a Mixed-Finance Development)	from initial lease-up until Operating Funds are received from HUD for the project
		prior to initial occupancy, salaries of persons responsible for selecting tenants and/or handling tenant accounts, cost of stationery, forms, and office supplies used in operation of a project;
	Predevelopment and planning costs	market study, survey, title
		applications for funding and associated fees
		architectural and engineering fees
		consulting fees
		permit fees
		inspection costs
		costs of submitting funding applications (including consultants such as grant writers),
		housing surveys
	Contractors, as well as their fees and the underlying work	Abatement Contractors
		Remediation Contractors
		Demolition Contractors
		Construction Contractors
		Site and infrastructure contractors
		Demolition
		Grading
		Sanitary sewers & storm sewers
		water distribution systems
		Gas distribution systems
		Electrical distribution systems
	Costs associated with undertaking a cost certification	

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	Financing costs associated with the Development activities	
	Structures, fixtures, and associated amenities	parking lots
		community buildings
		computer centers
		social services space
	Administrative costs attributable to a specific Development project, as long as they fall within the cost limits and the PHA is not also taking an Administration Fee	
	Costs associated with undertaking a Physical Needs Assessment (PNA).	
Type	**Activity**	**Examples**
Financing	Preparing applications for funding whether or not the funding is awarded;	such as for a Choice Neighborhoods grant
		tax credit allocation
	Legal services	lenders
		investors
	Construction period interest;	
	Due diligence	market study
		environmental testing
		title, and survey
	Fairness opinion	
	Other Development and Modernization activities necessary to obtain financing.	
Type	**Activity**	**Examples**

Modernization Demolition and Reconfiguration	Reconfiguration costs to reconfigure existing dwelling units to units with different bedroom sizes or to a nondwelling use.	
	Planning Costs related to a Public Housing Project	architectural and engineering fees (such as costs of inspection, materials tests, and soil tests)
		permit fees
		inspection costs
		costs of submitting funding applications (including consultants such as grant writers)
		surveys
		borings and soil test pits
		photographs
		blueprints
		specifications
	Site Acquisition costs related to a Public Housing Project	amounts paid for land and existing improvements
		any amounts disbursed for prior-year taxes and deducted from the purchase price,
		amounts disbursed for current taxes prorated to the date of acquisition
		the cost of boundary, property line, topographical, and utility surveys, including maps and perimeter descriptions;
		the cost of monuments and landmarks
		the cost of all blueprints and work product furnished by the surveyor
		appraisals
		Legal services for title information
		title certificates
		title commitments and policies

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		legal costs including those relating to condemnation proceedings
	Site Improvement costs related to a Public Housing Project: Grading	stripping top soil
		the cutting, filling, back filling, and grading necessary to bring the entire area outside of the buildings to the subgrade levels of paved, surfaced, and planted areas.
	Site Improvement costs related to a Public Housing Project: Sanitary Sewers	normal excavation
		backfilling
		piping
		manholes
		cleanouts
		sewage pumping
		disposal facilities
		branches and connections up to but outside of building walls
		carrying branches and connections through buildings en route to other buildings
	Site Improvement costs related to a Public Housing Project: Storm Sewers	normal excavation and backfill
		piping
		manholes
		street catch basins and inlets
		yard catch basins and inlets
		cleanouts
	Site Improvement costs related to a Public Housing Project: Water Distribution System	normal excavation and backfill
		piping
		valves and boxes
		hydrants

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		curb cocks and boxes
		yard drinking fountains
		manholes
		master meter installation
	Site Improvement costs related to a Public Housing Project: Gas Distribution System	normal excavation and backfill
		piping
		valves and boxes
		curb cocks and boxes
		drip pots
		regulators
		master meter installations
	Site Improvement costs related to a Public Housing Project: Electric Distribution System	normal excavation & backfill
		overhead lines and poles
		underground lines
		transformers
		transformer vaults
		yard lights
		master meter installations
		branches and connections up to but outside of building walls
		the cost of carrying such branches and connections through buildings en route to other buildings
		street lighting
		fire and police alarm systems
	Site Improvement costs related to a Public Housing Project: Correction of Abnormal	abnormal excavation resulting conditions, such as rock, muck, water, quicksand,

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	Subsoil Conditions	abnormal excavation over and above the cost for normal rough grading and excavation work.
	Site Improvement costs related to a Public Housing Project: Excess Dwelling and Non-dwelling Foundations	excess foundation work in connection with buildings, utilities, and other site improvements
		excess foundation work where the unusual character of the subsoil or site topography requires piling, caissons, underpinnings, or very unusual depth of footings
	Site Improvement costs related to a Public Housing Project: Paved Areas	cost of streets and alleys
		subgrading
		paving,
		curbs
		gutters
		the cost of walks
		constructing driveways
		parking areas
		playgrounds
		other similar surfaced areas
	Site Improvement costs related to a Public Housing Project: Finished Grading, Lawns, and Planting	subgrade preparation
		top soiling
		seeding
		sodding
		planting trees and scrubs
		other landscaping
	Site Improvement costs related to a Public Housing Project: Miscellaneous	building retaining walls and bulkheads
		structural playground facilities (such as spray-pools)
		project signage

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		fences
		garbage stations
		benches
		clotheslines
		flag poles
	Demolition	demolishing and clearing existing structures and other improvements
		disconnecting utilities
		clearing the site
	Reconfiguration	costs incurred in connection with the expansion of existing dwelling space to enlarge room sizes, provide storage, or add additional bedrooms.
Type	**Activity**	**Examples**
Modernization - Dwelling Structure costs related to a Public Housing Project	The cost of normal excavation and backfill, normal foundations and other structural costs of dwelling buildings and spaces.	incinerators
		laundry facilities
		closet spaces
		halls
		corridors
		entrance lobbies
		equipment spaces
		perambulator and other tenant storage spaces
		fixed cabinets, cupboards, shelving
		other built-in facilities
	The cost of all interior plumbing, gas, and domestic hot and cold water installations within dwelling building walls	piping
		fixtures
		bathroom accessories

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		domestic hot water heaters
		circulating pumps
		Individual gas and water meters
	The cost of all heating installations within dwelling building walls or in group or central plants	piping, ducts
		radiators
		vents
		grills
		fans
		fixed heating units (such as floor furnaces, panel type wall heaters, or other heating units built into the structure) and all accessories
		entire cost of plant structure
		cost of equipment
		heating mains
		domestic hot water mains
		pipe tunnels
	The cost of interior dwelling electrical installation (from service drops)	conduits
		wiring devices
		boxes
		receptacles
		master meter
		individual meter
		switches
		finished electrical hardware
		circuit breakers
		lights

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		fixtures
		other appurtenances
Type	**Activity**	**Examples**
Modernization - Dwelling Equipment costs	the cost of items that are not connected to ducts or pipes for the distribution of heat, shades, screens, and other similar equipment	ranges
		refrigerators
Type	**Activity**	**Examples**
Modernization - Nondwelling Structure costs	costs for administration buildings and spaces for administration buildings, community buildings, or related spaces	structures
		plumbing
		heating mains
		ventilating
		electrical installation
Type	**Activity**	**Examples**
Modernization - Nondwelling Equipment costs	office furniture and equipment, maintenance, community space, or computers	central processing, and peripheral equipment
		input and output machines
		data preparation machines
		data storage machines
		major components that “upgrade” the processing of computers and/or peripheral equipment
Type	**Activity**	**Examples**
Modernization - Purchase or Leasing of	Non-Passenger Vehicle	Vehicles needed to carry out physical improvements and with Force Account Labor only

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Vehicles		Vehicles needed to carry out Management Improvements
		Truck/ Snowplow
	Passenger Vehicles	Vehicles used on a full-time basis to carry out the Capital Fund Program.
		a car or van needed by the Capital Fund coordinator or in-house architect on a full-time basis to visit work sites
		vehicles used to travel to resident meetings related to Capital Fund Activities
Type	**Activity**	**Examples**
Modernization - Emergency Activities	Capital Fund-related activities identified as Emergency Work.	
Type	**Activity**	**Examples**
Modernization - Energy Efficiency	Activities designed to promote energy conservation and efficiency measures	New or updated Energy Audits, to the extent that Public Housing Operating Funds are not available and the audit is part of a Capital Fund program
		Implementation of any energy and water conservation measure identified in the Energy Audit
		Integrated utility management and capital planning
		Installation of fixtures or fittings to increase energy and water-use efficiency
		Installation and use of Energy Star appliances as part of a replacement program and in a cost-effective manner
		Automation of utility and energy management systems, including changing from master metering to individual meters as part of a Capital Fund program

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Type	Activity	Examples
Modernization -Non-routine Maintenance	Work items that ordinarily would be performed on a regular basis 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.	The replacement of obsolete utility systems and dwelling equipment.
Type	**Activity**	**Examples**
Modernization - Planned Code Compliance	Building code compliance includes design and physical improvement costs associated with code compliance	compliance with local building code or the Uniform Physical Condition Standards (UPCS) under PHAS,
		compliance with a national building code, such as those developed by the International Code Council or the National Fire Protection Association
		compliance with the 2009 International Energy Conservation Code (IECC), or ASHRAE standard 90.1-2010, "Energy Standard for Buildings Except Low-Rise Residential Buildings," for multifamily high-rises (four stories or higher), or a successor energy code or standard that HUD adopts for new construction.
Type	**Activity**	**Examples**
Modernization - Vacancy Reduction	Physical improvements to reduce the number of vacant public housing units, but excluding costs for routine vacant unit turnaround.	
	Vacancy reduction activities must remedy a defined vacancy problem as detailed in a vacancy reduction program in the PHA's 5-Year Action Plan.	
Type	**Activity**	**Examples**
Economic Self-	Capital expenditures to facilitate programs	costs for resident job training

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Sufficiency	to improve the empowerment and economic self-sufficiency of public housing residents	development of resident-owned businesses
		activities to enable residents and their businesses to carry out Capital Fund-assisted activities
Type	**Activity**	**Examples**
Management Improvements	Noncapital activities, which can be Project-specific or PHA-wide improvements during the implementation period of the physical improvements, unless a longer period is clearly necessary to achieve performance targets.	upgrade or improve the operation or management of the PHA's Public Housing Projects
		promote energy conservation
		sustain physical improvements at those projects
		correct management deficiencies, identified by HUD, an audit, or the PHA itself. These management deficiencies may be identified by the PHA, HUD, or a PHA auditor.
	Training for PHA personnel in operations and procedures,	resident selection training
		rent collection training
		eviction training
	Improvements to the PHA's management, financial, and accounting control systems;	[redacted]
	Technical assistance to a Resident Council or Resident Management Corporation (RMC) to assess feasibility of carrying out management functions for a specific project or projects;	
	Training residents in skills directly related to the operation and management of the development(s) for potential employment by the RMC;	
	Training RMC board members	community organization training
		board development training
		leadership training

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	Costs associated with the formation of an RMC	
	Costs to promote more effective resident participation in the operation of the PHA's Capital Fund activities	costs for staff support
		outreach
		training
		meeting and office space
		childcare
		transportation
		access to computers that are modest and reasonable
	Development and implementation of improved applicant screening procedures.	
Type	**Activity**	**Examples**
Resident Relocation and Mobility Counseling Due to Capital Fund Activity	Relocation and other assistance as may be required or permitted by Public Housing Requirements for permanent or temporary relocation, as a direct result of modernization, development, rehabilitation, demolition, disposition, reconfiguration, acquisition, an emergency, or Non-Presidentially Declared natural disaster	reimbursement to affected residents of reasonable out-of-pocket expenses incurred in connection with temporary relocation
		the cost of moving to and from temporary housing
		any increase in monthly rent/utility costs
	Public Housing Residents	Moving expenses and direct losses of property
		additional relocation payments to assist such persons to acquire decent, safe, and sanitary dwellings
	Direct expenses for the cost of services incident to the relocation of public housing residents	the salaries of administrative personnel assigned full-time duties related to the relocation of public housing residents
	Settlement costs to displaced occupants for reasonable and necessary expenses incurred in connection with PHA acquisition or redevelopment of property	recording fees
		transfer tax,
		pro rata portion of real property taxes

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		mortgage prepayment penalties
	Replacement Housing Payments for an owner-occupant of a single or two-family dwelling acquired by the PHA.	
Type	**Activity**	**Examples**
Safety and Security	Capital expenditures designed to improve the security and safety of residents.	Security cameras
		Security lights
		Security equipment (e.g., bars for windows, new doors and locks, fencing);
		Surveillance equipment;
		Access control systems;
		Physical security services associated with security guards before the end of the Implementation Period of Physical Improvements;
		Training of in-house security personnel as a Management Improvement
		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
		Conversion of a dwelling unit into non-dwelling space or construction of non-dwelling space for use by project management, voluntary tenant patrols, security guards, or local/law enforcement agencies
		Stabilization of buildings through consolidating occupied units into a specific area and securing vacant units/floors

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Type	Activity	Examples
Administrative Costs	For PHAs that have not converted to asset management costs that are necessary for the planning, design, implementation, and monitoring of the physical and Management Improvements	Salaries
		Employee Benefit Contributions
		Preparation of Documents
		Resident Participation
		Litigation Expenses
Type	**Activity**	**Examples**
Capital Fund Program Fee (CFP Fee)	For PHAs that have converted to asset management this fee may be charged to a Capital Fund grant by the PHA following asset management procedures to cover costs associated with oversight and management of the Capital Fund Program by the Central Office Cost Center	duties related to general capital planning,
		preparation of the 5-Year Action Plan,
		processing of LOCCS,
		preparation of reports,
		drawing of funds
		budgeting
		accounting
		procurement of construction and other miscellaneous contracts.
Type	**Activity**	**Examples**
Audit	Costs of the PHA's annual audit attributable to the portion of the audit covering the Capital Fund Program	
Type	**Activity**	**Examples**
Legal Costs	Legal costs associated with Eligible Activities funded under the Capital Fund Program	costs related to preparing property descriptions for the DOT or DORC
		permitting

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		zoning
		environmental review
		procurement,
		contracting
		Development activities
		reasonable fees paid to attorneys for handling litigation related to the Capital Fund Program
Homeownership	Activities associated with public housing homeownership	Development activities and financing uses in service of a public housing homeownership program
		Modernization of existing public housing units for sale to qualified homebuyers
		Feasibility study for conversion of rental units to homeownership
		Preparation costs for application to convert rental units to homeownership
		Construction or acquisition of units
		Demolition to make way for new construction
		Abatement of environmentally hazardous materials
		Site improvements
		Construction or permanent financing, such as write-downs for new construction
		Acquisition costs with or without rehabilitation
		Homebuyer assistance
		Relocation assistance and mobility counseling
		Homeownership counseling
		Administrative and marketing costs
		Down payment assistance
		Closing cost assistance

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		Subordinate Mortgage loans

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