

§ 905.104

5.403, are eligible to receive Capital Funds.

§ 905.104 HUD approvals.

All HUD approvals required in this part must be in writing and from an official designated to grant such approval.

§ 905.106 Compliance.

PHAs or owner/management entities or their partners are required to comply with all applicable provisions of this part. Execution of the CF ACC Amendment, submissions required by this part, and disbursement of Capital Fund grants from HUD are individually and collectively deemed to be the PHA's certification that it is in compliance with the provisions of this part and all other Public Housing Program Requirements. Noncompliance with any provision of this part or other applicable requirements may subject the PHA and/or its partners to sanctions contained in § 905.804 of this part.

§ 905.108 Definitions.

The following definitions apply to this part:

1937 Act. The term "1937 Act" is defined in 24 CFR 5.100.

Accessible. As defined in 24 CFR 8.3.

ACC. The Annual Contributions Contract between HUD and a PHA covering a public housing project or multiple public housing projects.

ACC Amendment. An Amendment to the ACC to reflect specific changes made to a PHA's public housing inventory or funding. An ACC Amendment may be a Capital Fund ACC Amendment, a Mixed-Finance ACC Amendment, a Capital Fund Financing ACC Amendment, or other form of amendment specified by HUD.

Additional Project Costs. The sum of the following HUD-approved costs related to the development of a public housing project, which are not included in the calculation of the Total Development Cost (TDC) limit, but are included in the maximum project cost as stated in § 905.314(b). Additional project costs include the following:

(1) Costs for the demolition or remediation of environmental hazards associated with public housing units that

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will not be rebuilt on the original site; and

(2) Extraordinary site costs that have been verified by an independent state-registered, licensed engineer (e.g., removal of underground utility systems; replacement of off-site underground utility systems; extensive rock and/or soil removal and replacement; and amelioration of unusual site conditions, such as unusual slopes, terraces, water catchments, lakes, etc.); and

(3) Cost effective energy-efficiency measures in excess of standard building codes.

Capital Fund (CF). The fund established under section 9(d) of the 1937 Act (42 U.S.C.) 1437g(d).

Capital Fund Annual Contributions Contract Amendment (CF ACC). An amendment to the Annual Contributions Contract (ACC) under the 1937 Act between HUD and the PHA containing the terms and conditions under which the Department assists the PHA in providing decent, safe, and sanitary housing for low-income families. The CF ACC must be in a form prescribed by HUD, under which HUD agrees to provide assistance in the development, modernization, and/or operation of a low-income housing project under the 1937 Act and the PHA agrees to modernize and operate the project in compliance with all Public Housing Requirements.

Capital Fund Program Fee. A fee that may be charged to a Capital Fund grant by the PHA to cover costs associated with oversight and management of the CFP by the PHA Central Office Cost Center (COCC). These costs include duties related to general capital planning, preparation of the Annual Plan, processing of the Line of Credit Control System (LOCCS), preparation of reports, drawing of funds, budgeting, accounting, and procurement of construction and other miscellaneous contracts. The CFP fee is the administrative cost for managing a Capital Fund grant for a PHA subject to asset management.

Community Renewal Costs. Community Renewal Costs consist of the sum of the following HUD-approved costs related to the development of a public housing project: planning (including proposal preparation); administration;

site acquisition; relocation; demolition of—and site remediation of environmental hazards associated with—public housing units that will be replaced on the project site; interest and carrying charges; off-site facilities; community buildings and nondwelling facilities; contingency allowance; insurance premiums; any initial operating deficit; on-site streets; on site utilities; and other costs necessary to develop the project that are not covered under the Housing Construction Cost (HCC). Public housing capital assistance may be used to pay for Community Renewal Costs in an amount equivalent to the difference between the HCC paid for with public housing capital assistance and the TDC limit.

Cooperation agreement. An agreement, in a form prescribed by HUD, between a PHA and the applicable local governing body or bodies that assures exemption from real and personal property taxes, provides for local support and services for the development and operation of public housing, and provides for PHA payments in lieu of taxes (PILOT).

Date of Full Availability (DOFA). The last day of the month in which substantially all (95 percent or more) of the units in a public housing project are available for occupancy.

Declaration of Restrictive Covenant. The Declaration of Restrictive Covenant is a legal instrument that binds the PHA and the Owner Entity to develop mixed-finance projects in compliance with Public Housing Requirements and restricts disposition of the property, including transferring, conveying, assigning, leasing, mortgaging, pledging or otherwise encumbering the property.

Declaration of Trust (DOT). A legal instrument that grants HUD an interest in public housing property. It provides public notice that the property must be operated in accordance with all public housing federal requirements, including the requirement not to convey or otherwise encumber the property unless expressly authorized by federal law and/or HUD.

Development. Any or all undertakings necessary for planning, land acquisition, demolition, construction, or

equipment in connection with a public housing project.

Emergency work. Capital Fund related physical work items that if not done pose an immediate threat to the health or safety of residents, and which must be completed within one year of funding. Management Improvements are not eligible as emergency work and therefore must be covered by the CFP 5-Year Action Plan before the PHA may carry them out.

Energy audit. A systematic review of the energy requirements and consumption for property with the intent to identify potential opportunities for energy and water savings through improved operational efficiency or more efficient components.

Expenditure. Capital Funds disbursed by the PHA to pay for obligations incurred in connection with work included in a CFP 5-Year Action Plan that has been approved by the PHA Board of Commissioners and HUD. Total funds expended means cash actually disbursed and does not include retainage.

Federal Fiscal Year (FFY). The Federal Fiscal Year begins each year on October 1 and ends on September 30 of the following year.

Force account labor. Labor employed directly by the PHA on either a permanent or a temporary basis.

Fungibility. As it relates to the Capital Fund Program, fungibility allows the PHA to substitute work items between any of the years within the latest approved CFP 5-Year Action Plan, without prior HUD approval.

HCC. The sum of the following HUD-approved costs related to the development of a public housing project: dwelling unit hard costs (including construction and equipment), builder's overhead and profit, the cost of extending utilities from the street to the public housing project, finish landscaping, and the payment of Davis-Bacon wage rates.

Line of Credit Control System (LOCCS). LOCCS is a HUD grant disbursement system. LOCCS currently provides disbursement controls for over 100 HUD grant programs. LOCCS-Web is an intranet version of LOCCS for HUD personnel. eLOCCS is the Internet link

to LOCCS data for HUD business partners.

Mixed-finance modernization. Use of the mixed-finance method of development to modernize public housing projects described in § 905.604.

Modernization. Modernization means the activities and items listed in § 905.200(b)(4-18).

Natural disaster. An extraordinary event, such as an earthquake, flood, or hurricane, affecting only one or few PHAs, but excluding presidentially declared emergencies and major disasters under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Obligation. A binding agreement for work or financing that will result in outlays, immediately or in the future. All obligations must be incorporated within the CFP 5-Year Action Plan that has been approved by the PHA Board of Commissioners and HUD. This includes funds obligated by the PHA for work to be performed by contract labor (*i.e.*, contract award), or by force account labor (*i.e.*, work actually started by PHA employees). Capital Funds identified in the PHA's CFP 5-Year Action Plan to be transferred to operations are obligated by the PHA once the funds have been budgeted and drawn down by the PHA. Once these funds are drawn down they are subject to the requirements of 24 CFR part 990.

Open grant. Any grant for which a cost certificate has not been submitted and which has not reached fiscal close-out as described in § 905.322 of this part.

Operating fund. Assistance provided under 24 CFR part 990 pursuant to section 9(e) of the 1937 Act (42 U.S.C. 1437g(e)) for the purpose of operation and management of public housing.

Owner entity. An entity that owns public housing units. In mixed-finance development, the Owner Entity may be the PHA, or may be an entity in which the PHA owns a partial interest, or may be an entity in which the PHA has no ownership interest. The Owner Entity is subject to the applicable requirements of this subpart.

Partner. A third-party entity with which the PHA has entered into a partnership or other contractual arrangement to provide for the mixed-finance development of public housing units

pursuant to this subpart. The partner has primary responsibility with the PHA for the development and/or operation of the public housing units and is subject to the applicable requirements of subpart F of this part.

Physical Needs Assessment (PNA). A systematic review of all the major physical components of property to result in a long-term schedule for replacement of each component and estimated capital costs required to meet the replacement need.

PIH Information Center (PIC). PIH's current system for recording data concerning: the public housing inventory, the characteristics of public housing and Housing Choice Voucher—assisted families, the characteristics of PHAs, and performance measurement of PHAs receiving Housing Choice Voucher funding.

Public Housing Agency (PHA). Any state, county, municipality, or other governmental entity or public body or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of public housing under this part.

Public Housing Assessment System (PHAS). The assessment system under 24 CFR part 902 for measuring the properties and PHA management performance in essential housing operations, including rewards for high performers and consequences for poor performers.

Public housing capital assistance. Assistance provided by HUD under the Act in connection with the development of public housing under this part, including Capital Fund assistance provided under section 9(d) of the Act, public housing development assistance provided under section 5 of the Act, Operating Fund assistance used for capital purposes under section 9(g)(2) or 9(e)(1)(I) (with HUD's approval of such financing of rehabilitation and development of public housing units) of the Act, and HOPE VI grant assistance.

Public housing funds. Any funds provided through the Capital Fund or Other Public Housing Development Sources, such as HOPE VI, Choice Neighborhoods, Development Funds, disposition proceeds that a PHA may realize under section 18 of the 1937 Act

(42 U.S.C. 1437p), or any other funds appropriated by Congress for public housing.

Public housing project. The term “public housing” means low-income housing, and all necessary appurtenances thereto, assisted under the 1937 Act, other than assistance under 42 U.S.C. 1437f of the 1937 Act (section 8). The term “public housing” includes dwelling units in a mixed-finance project that are assisted by a public housing agency with public housing capital assistance or Operating Fund assistance. When used in reference to public housing, the term “project” means housing developed, acquired, or assisted by a PHA under the 1937 Act, and the improvement of any such housing.

Public housing requirements. All requirements applicable to public housing including, but not limited to, the 1937 Act; HUD regulations; the Consolidated Annual Contributions Contract, including amendments; HUD notices; and all applicable federal statutes, executive orders, and regulatory requirements, as these requirements may be amended from time to time.

Reasonable cost. An amount to rehabilitate or modernize an existing structure that is not greater than 90 percent of the TDC for a new development of the same structure type, number, and size of units in the same market area. Reasonable costs are also determined with consideration of HUD regulations including 24 CFR part 85, and 2 CFR part 225 (codifying OMB Circular A-87).

Reconfiguration. The altering of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units).

Uniform Federal Accessibility Standards (UFAS). As defined in 24 CFR 8.32; see also 24 CFR part 40.

§ 905.110 Incorporation by reference.

(a) Certain material is incorporated by reference into this part, with the approval of the Director of the Federal Register, under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, HUD must publish notice of change in the FEDERAL REGISTER and the material must be available to the

public. Incorporated material is available from the sources listed below and is available for inspection at HUD’s Office of Policy Development and Research, Affordable Housing Research and Technology Division, Department of Housing and Urban Development, telephone number 202-408-4370 (this is not a toll-free number). This material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 (this is not a toll-free number) or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1791 Tulle Circle NE., Atlanta, GA 30329 (<http://www.ashrae.org/standards-research-technology/standards-guidelines>).

(1) ASHRAE 90.1-2010, “Energy Standard for Buildings Except Low-Rise Residential Buildings,” copyright 2010, IBR approved for §§ 905.200(b) and 905.312(b) of this part.

(2) [Reserved]

(c) International Code Council, 500 New Jersey Avenue NW., 6th Floor, Washington, DC 20001.

(1) International Energy Conservation Code (IECC), January 2009, IBR approved for §§ 905.200(b) and 905.312(b).

(2) [Reserved]

Subpart B—Eligible Activities

SOURCE: 78 FR 63773, Oct. 24, 2013, unless otherwise noted.

§ 905.200 Eligible activities.

(a) *General.* Activities that are eligible to be funded with Capital Funds as identified in this section include only items specified in an approved CFP 5-Year Action Plan as identified in § 905.300, or approved by HUD for emergency and natural disaster assistance, other than presidentially declared natural disasters and emergencies.

(b) *Eligible activities.* Eligible activities include the development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of