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units with an approved CFP 5-Year Action Plan for use of 100 percent of the Capital Fund grant in operations may submit the cost certificate any time after the funds have been budgeted to operations and withdrawn, as described in §905.314(l) of this part.

(2) If the PHA does not submit the cost certificate and the final CFP Annual Statement/Performance and Evaluation Report within the period prescribed in this section, HUD may impose restrictions on open Capital Fund grants; e.g., establish review thresholds, set the grant to “auto review” (HUD automatically reviews it on a periodic basis), or suspend grants, until the cost certificate for the affected grant is submitted. These restrictions may be imposed by HUD after notification of the PHA.

(c) Audit. The cost certificate is a financial statement subject to audit pursuant to 24 CFR 85.26. After submission of the cost certificate to HUD, the PHA shall provide the cost certificate to its independent public auditor (IPA) as part of its annual audit. After audit, the PHA will provide HUD with the results of the audit. All exceptions noted by the independent public auditor (IPA), and the schedule to complete corrective actions recommended by the auditor.

(d) Review and approval. For PHAs exempt from the audit requirements, HUD will review and approve the cost certificate based on available information regarding the Capital Fund grant. For PHAs subject to an audit, HUD will review the information from the annual audit provided by the PHA and approve the certificate after all exceptions, if any, have been resolved.

(e) Recapture. All Capital Funds in excess of the actual cost incurred for the grant are subject to recapture. Any funds awarded to the PHA that are returned or any funds taken back from the PHA in a fiscal year after the grant was awarded are subject to recapture.

§ 905.324 Data reporting requirements.

The PHA shall provide, at minimum, the following data reports, at a time and in a form prescribed by HUD:

(a) The Performance and Evaluation Report as described in §905.300(b)(8) of this part;

(b) Updates on the PHA’s building and unit data as required by HUD;

(c) Reports of obligation and expenditure; and

(d) Any other information required for participation in the Capital Fund Program.

§ 905.326 Records.

(a) The PHA will maintain full and complete records of the history of each Capital Fund grant, including, but not limited to, CFP 5-Year Action Plans, procurement, contracts, obligations, and expenditures.

(b) The PHA shall retain for 5 years after HUD approves either the actual development or modernization cost certificate all documents related to the activities for which the Capital Fund grant was received, unless a longer period is required by applicable law.

(c) HUD and its duly authorized representatives shall have full and free access to all PHA offices, facilities, books, documents, and records, including the right to audit and make copies.

Subpart D—Capital Fund Formula

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

§ 905.400 Capital Fund formula (CF formula).

(a) General. This section describes the formula for allocating Capital Funds to PHAs.

(b) Formula allocation based on relative needs. HUD shall allocate Capital Funds to the PHAs in accordance with the CF formula. The CF formula measures the existing modernization needs and accrual needs of PHAs.

(c) Allocation for existing modernization needs under the CF formula. HUD shall allocate one-half of the available Capital Fund amount based on the relative existing modernization needs of PHAs, determined in accordance with paragraph (d) of this section.

(d) PHAs with 250 or more units in FFY 1999, except the New York City and Chicago Housing Authorities. The estimates of the existing modernization needs for these PHAs shall be based on the following:
(1) Objective measurable data concerning the following PHA, community, and project characteristics applied to each project:
   (i) The average number of bedrooms in the units in a project (Equation coefficient: 4604.7);
   (ii) The total number of units in a project (Equation coefficient: 10.17);
   (iii) The proportion of units in a project in buildings completed in 1978 or earlier. In the case of acquired projects, HUD will use the DOFA unless the PHA provides HUD with the actual date of construction completion. When the PHA provides the actual date of construction completion, HUD will use that date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation coefficient: 4965.4);
   (iv) The cost index of rehabilitating property in the area (Equation coefficient: $10,608);
   (v) The extent to which the units of a project were in a nonmetropolitan area as defined by the United States Bureau of the Census (Census Bureau) during FFY 1996 (Equation coefficient: 2763.9);
   (vi) The PHA is located in the Southern census region, as defined by the Census Bureau (Equation coefficient: $269.4);
   (vii) The PHA is located in the Western census region, as defined by the Census Bureau (Equation coefficient: $1,709.5);
   (viii) The PHA is located in the Midwest census region as defined by the Census Bureau (Equation coefficient: $246.2); and
   (2) An equation constant of 13,851.
   (i) Newly constructed units. Units with a DOFA date of October 1, 1991, or after, shall be considered to have a zero existing modernization need.
   (ii) Acquired projects. Projects acquired by a PHA with a DOFA date of October 1, 1991, or after, shall be considered to have a zero existing modernization need.
   (3) PHAs with fewer than 250 units in FFY 1999. The estimates of the existing modernization need shall be based on the following:
      (i) Objective measurable data concerning the PHA, community, and project characteristics applied to each project:
         (A) The average number of bedrooms in the units in a project. (Equation coefficient: 1427.1);
         (B) The total number of units in a project. (Equation coefficient: 24.3);
         (C) The proportion of units in a project in buildings completed in 1978 or earlier. In the case of acquired projects, HUD shall use the DOFA date unless the PHA provides HUD with the actual date of construction completion (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation coefficient: $13,897);
         (D) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation coefficient: $2,016.3);
         (E) The extent to which the units of a project were in a nonmetropolitan area as defined by the Census Bureau during FFY 1996. (Equation coefficient: 6157.7);
         (F) The PHA is located in the Southern census region, as defined by the Census Bureau. (Equation coefficient: 4379.2);
         (G) The PHA is located in the Western census region, as defined by the Census Bureau. (Equation coefficient: 3747.7);
         (H) The PHA is located in the Midwest census region as defined by the Census Bureau. (Equation coefficient: $2,073.5); and
      (ii) An equation constant of 24,762.

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(A) Newly constructed units. Units with a DOFA date of October 1, 1991, or after, shall be considered to have a zero existing modernization need.

(B) Acquired projects. Projects acquired by a PHA with a DOFA date of October 1, 1991, or after, shall be considered by HUD to have a zero existing modernization need.

(5) Calibration of existing modernization need for cost index of rehabilitating property in the area. The estimated existing modernization need determined under paragraphs (d)(1), (2), or (3) of this section shall be adjusted by the values of the cost index of rehabilitating property in the area.

(6) Freezing of the determination of existing modernization need. FFY 2008 is the last fiscal year that HUD will calculate the existing modernization need. The existing modernization need will be frozen for all developments at the calculation as of FFY 2008 and will be adjusted for changes in the inventory and paragraph (d)(4) of this section.

(e) Allocation for accrual needs under the CF formula. HUD shall allocate the other half of the remaining Capital Fund amount based on the relative accrual needs of PHAs, determined in accordance with this paragraph of this section.

(1) PHAs with 250 or more units, except the New York City and Chicago Housing Authorities. The estimates of the accrual need shall be based on the following:

(i) Objective measurable data concerning the following PHA, community, and project characteristics applied to each project:

(A) The average number of bedrooms in the units in a project. (Equation coefficient: 324.0);

(B) The extent to which the buildings in a project average fewer than 5 units. (Equation coefficient: 93.3);

(C) The age of a project, as determined by the DOFA date. In the case of acquired projects, HUD shall use the DOFA date unless the PHA provides HUD with the actual date of construction completion, in which case HUD shall use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation coefficient: 7.8);

(D) Whether the development is a family project. (Equation coefficient: 184.5);

(E) The cost index of rehabilitating property in the area. (Equation coefficient: -252.8);

(F) The extent to which the units of a project were in a nonmetropolitan area as defined by the Census Bureau during FFY 1996. (Equation coefficient: -121.3);

(G) PHA size of 6,600 or more units in FFY 1999. (Equation coefficient: -150.7);

(H) The PHA is located in the Southern census region, as defined by the Census Bureau. (Equation coefficient: 28.4);

(ii) An equation constant of 1371.9.

(2) For the New York City and Chicago Housing Authorities, based on a large sample of direct inspections. Prior to the cost calibration in paragraph (e)(4) of this section the number used for the accrual need of family developments is $1,395 in New York City, and $1,251 in Chicago, and the number for elderly developments is $734 in New York City and $864 in Chicago.

(3) PHAs with fewer than 250 units. The estimates of the accrual need shall be based on the following:

(i) Objective measurable data concerning the following PHA, community, and project characteristics applied to each project:

(A) The average number of bedrooms in the units in a project. (Equation coefficient: 325.5);

(B) The extent to which the buildings in a project average fewer than 5 units. (Equation coefficient: 179.8);

(C) The age of a project, as determined by the DOFA date. In the case of acquired projects, HUD shall use the DOFA date unless the PHA provides HUD with the actual date of construction completion (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation coefficient: -7.8);

(D) Whether the development is a family project. (Equation coefficient: 184.5);

(E) The cost index of rehabilitating property in the area. (Equation coefficient: -252.8);

(F) The extent to which the units of a project were in a nonmetropolitan area as defined by the Census Bureau during FFY 1996. (Equation coefficient: -121.3);

(G) PHA size of 6,600 or more units in FFY 1999. (Equation coefficient: -150.7);

(H) The PHA is located in the Southern census region, as defined by the Census Bureau. (Equation coefficient: 28.4);
construction of all the buildings), subject to a 50-year cap. (Equation coefficient: 9.0)

(D) Whether the project is a family development. (Equation coefficient: 59.3)

(E) The cost index of rehabilitating property in the area. (Equation coefficient: 1570.5)

(F) The extent to which the units of a project were in a nonmetropolitan area as defined by the Census Bureau during FFY 1996. (Equation coefficient: 122.9)

(G) The PHA is located in the Southern census region, as defined by the Census Bureau. (Equation coefficient: 564.0)

(H) The PHA is located in the Western census region, as defined by the Census Bureau. (Equation coefficient: 29.6)

(I) The PHA is located in the Midwest census region as defined by the Census Bureau. (Equation coefficient: 418.3)

(ii) An equation constant of 3193.6.

(2) Replacement units. Replacement units newly constructed on or after October 1, 1998, that replace units in a project funded in FFY 1999 by the Comprehensive Grant formula system or the Comprehensive Improvement Assistance Program (CIAP) formula system shall be given a new CF ACC number as a separate project and shall be treated as a newly constructed development as outlined in §905.600 of this part.

(3) Reconfiguration of units. Reconfiguration of units may cause the need to be calculated by the new configuration based on the formula characteristics in the building and unit’s PIC module (refer to the formula sections here). The unit counts will be determined by the CF units existing after the reconfiguration.

(4) Reduction of units. For a project losing units as a result of demolition and disposition, the number of units on which the CF formula is based shall be the number of units reported as eligible for Capital Funds as of the reporting date. Units are eligible for funding until they are removed due to demolition and disposition in accordance with a schedule approved by HUD.

(g) Computation of formula shares under the CF formula. (1) Total estimated existing modernization need. The total estimated existing modernization need of a PHA under the CF formula is the result of multiplying for each project the PHA’s total number of formula units by its estimated existing modernization need per unit, as determined by paragraph (d) of this section, and calculating the sum of these estimated project needs.

(2) Total accrual need. The total accrual need of a PHA under the CF formula is the result of multiplying for each project the PHA’s total number of formula units by its estimated existing modernization need per unit, as determined by paragraph (e) of this section, and calculating the sum of these estimated accrual needs.

(3) PHA’s formula share of existing modernization need. A PHA’s formula share of existing modernization need under the CF formula is the PHA’s total estimated existing modernization need divided by the total existing modernization need of all PHAs.
(4) PHA’s formula share of accrual need. A PHA’s formula share of accrual need under the CF formula is the PHA’s total estimated accrual need divided by the total existing accrual need of all PHAs.

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

(h) CF formula capping. (1) For units that are eligible for funding under the CF formula (including replacement housing units discussed below), a PHA’s CF formula share shall be its share of capital need, as determined under the CF formula, subject to the condition that no PHA’s CF formula share for units funded under the CF formula can be less than 94 percent of its formula share had the FFY 1999 formula system been applied to these CF formula-eligible units. The FFY 1999 formula system is based upon the FFY 1999 Comprehensive Grant formula system for PHAs with 250 or more units in FFY 1999 and upon the FFY 1999 Comprehensive Improvement Assistance Program (CIAP) formula system for PHAs with fewer than 250 units in FFY 1999.

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

(i) Replacement Housing Factor to reflect formula need for developments with demolition or disposition occurring on or after October 1, 1998, and prior to September 30, 2013. (1) RHF generally. PHAs that have a reduction in the number of units attributable to demolition or disposition of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the CFF calculation qualify for application of an RHF, subject to satisfaction of criteria stated in paragraph (1)(5) of this section.

(2) When applied. The RHF will be added, where applicable:

(i) For the first 5 years after the reduction of units described in paragraph (1)(1) of this section; and

(ii) For an additional 5 years if the planning, leveraging, obligation, and expenditure requirements are met. As a prior condition of a PHA’s receipt of additional funds for replacement housing provided for the second 5-year period or any portion thereof, a PHA must obtain a firm commitment of substantial additional funds, other than public housing funds, for replacement housing, as determined by HUD.

(3) Computation of RHF. The RHF consists of the difference between the CFF share without the CFF share reduction of units attributable to demolition or disposition and the CFF share that resulted after the reduction of units attributable to demolition or disposition.

(4) Replacement housing funding in FFYs 1998 and 1999. Units that received replacement housing funding in FFY 1998 will be treated as if they had received 2 years of replacement housing funding by FFY 2000. Units that received replacement housing funding in FFY 1999 will be treated as if they had received one year of replacement housing funding as of FFY 2000.

(5) PHA Eligibility for the RHF. A PHA is eligible for this factor only if the PHA satisfies the following criteria:

(i) The PHA will use the funding in question only for replacement housing;

(ii) The PHA will use the restored funding that results from the use of the replacement factor to provide replacement housing in accordance with the PHA’s 5-Year Action Plan, as approved by HUD under part 903 of this chapter as well as the PHA’s Board of Commissioners;

(iii) The PHA has not received funding for public housing units that will replace the lost units under Public Housing Development, Major Reconstruction of Obsolete Public Housing, HOPE VI, Choice Neighborhoods, Rental Assistance Payment (RAP), or programs that otherwise provide for replacement with public housing units;

(iv) The PHA, if designated as a troubled PHA by HUD, and not already under the direction of HUD or an appointed receiver, in accordance with
part 902 of this chapter, uses an Alternative Management Entity, as defined in part 902 of this chapter, for development of replacement housing and complies with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(v) The PHA undertakes any development of replacement housing in accordance with applicable HUD requirements and regulations.

(6) Failure to provide replacement housing in a timely fashion. (i) A PHA will be subject to the actions described in paragraph (i)(7)(ii) of this section if the PHA does not:

(A) Use the restored funding that results from the use of the RHF to provide replacement housing in a timely fashion as provided in paragraph (i)(7)(i) of this section and in accordance with applicable HUD requirements and regulations;

(B) Make reasonable progress on such use of the funding, in accordance with applicable HUD requirements and regulations.

(ii) If a PHA fails to act as described in paragraph (i)(6)(i) of this section, HUD will require appropriate corrective action under these regulations, may recapture and reallocate the funds, or may take other appropriate action.

(7) Requirement to obligate and expend RHF funds within the specified period. (i) In addition to the requirements otherwise applicable to obligation and expenditure of funds, PHAs are required to obligate assistance received as a result of the RHF within:

(A) 24 months from the date that funds become available to the PHA; or

(B) With specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing.

(ii) To the extent the PHA has not obligated any funds provided as a result of the RHF within the time frames required by this paragraph, or has not expended such funds within a reasonable time, HUD shall recapture the unobligated amount of the grant.

(j) Demolition and Disposition Transitional Funding (DDTF) to reflect formula need for developments with demolition or disposition on or after October 1, 2013. (1) DDTF generally. In FFY 2014 and thereafter, PHAs that have a reduction in the number of units occurring in FFY 2013 and attributable to demolition or disposition are automatically eligible to receive Demolition and Disposition Transitional Funding. The DDTF will be included in their annual Capital Fund grant for a 5-year period to offset the reduction in funding a PHA would receive from removing units from inventory. DDTF is subject to the criteria stated in paragraph (j)(4) of this section.

(2) When applied. DDTF will be added to a PHA’s annual CFP grant, where applicable, for 5 years after the reduction of units described in paragraph (j)(1) of this section.

(3) Computation of DDTF. The DDTF consists of the difference between the CFF share without the CFF share reduction of units attributable to demolition or disposition and the CFF share that resulted after the reduction of units attributable to demolition or disposition.

(4) PHA eligibility for the DDTF. A PHA is eligible for this factor only if the PHA satisfies the following criteria:

(i) The PHA will automatically receive the DDTF for reduction of units in accordance with paragraph (j)(1) of this section, unless the PHA rejects the DDTF funding for that fiscal year in writing;

(ii) The PHA will use the funding in question for eligible activities under the Capital Fund Program, found at 905.200—such as modernization and development—that are included in the PHA’s HUD approved CFP 5-Year Action Plan.

(iii) The PHA has not received funding for public housing units that will replace the lost units from disposition proceeds, or under Public Housing Development, Major Reconstruction of Obsolete Public Housing, HOPE VI, Choice Neighborhoods, RAP, or programs that otherwise provide for replacement with public housing units;

(iv) The PHA, if designated as a troubled PHA by HUD, and not already under the direction of HUD or an appointed receiver, in accordance with part 902 of this chapter, uses an Alternative Management Entity, as defined
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in part 902 of this chapter, and complies with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

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

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

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

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

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

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

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

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

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

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

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

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

Subpart E—Use of Capital Funds for Financing

SOURCE: 75 FR 65208, Oct. 21, 2010, unless otherwise noted.

§ 905.500 Purpose and description.

(a) This subpart provides the requirements necessary for a PHA to participate in the Capital Fund Financing Program (CFFP), under which the PHA may obtain HUD approval to borrow private capital and pledge a portion of its annual Capital Fund grant or public housing assets and other public housing property of the public housing agency as security.

(b) Under the CFFP, PHAs are permitted to borrow private capital to finance public housing development or modernization activities. A PHA may use a portion of its Capital Fund for debt service payments and usual and customary financing costs associated with public housing development or modernization (including public housing in mixed-finance developments). A PHA that undertakes such financing activities may, subject to HUD’s written approval, grant a security interest in its future annual Capital Fund grants, which shall be subject to the appropriation of those funds by Congress. The PHA’s financing activities are not obligations or liabilities of the Federal Government. The Federal Government does not assume any liability with respect to any such pledge of future appropriations, and the Federal Government neither guarantees nor