

all public housing projects in accordance with the CF ACC, as amended, and applicable HUD regulations, for the statutorily prescribed period. These periods shall be evidenced by a recorded DOT on all public housing property. If the PHA uses Capital Funds to develop public housing or to modernize existing public housing, the CF ACC term and the covenant to operate those projects are as follows:

(1) *Development activities.* Each public housing project developed using Capital Funds shall establish a restricted use covenant, either in the DOT or as a Declaration of Restrictive Covenants, to operate under the terms and conditions applicable to public housing for a 40-year period that begins on the date on which the project becomes available for occupancy, as determined by HUD.

(2) *Modernization activities.* For PHAs that receive Capital Fund assistance, the execution of each new CF ACC Amendment establishes an additional 20-year period that begins on the latest date on which modernization is completed, except that the additional 20-year period does not apply to a project that receives Capital Fund assistance only for management improvements.

(3) *Operating Fund.* Any public housing project developed that receives Operating Fund assistance shall have a covenant to operate under requirements applicable to public housing for a 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided, except for such shorter period as permitted by HUD by an exception.

(b) *Mortgage or security interests.* The PHA shall not allow *any mortgage* or security interest in public housing assets, including under section 30 of the 1937 Act (42 U.S.C. 1437z-2), without prior written approval from HUD. PHAs that undertake financing unsecured by public housing assets shall include the following nonrecourse language in all financing documents as follows:

“This financing is non-recourse to any public housing property (real or personal property including all public housing assets or income), or disposition proceeds approved pursuant to Section 18 of the United States Housing Act of 1937 (unless explicitly permitted by HUD in the Section 18 approval letter).”

(c) *Applicability of latest expiration date.* All public housing subject to this part or required by law shall be maintained and operated as public housing, as prescribed, until the latest expiration date provided in section 9(d)(3) of the 1937 Act (42 U.S.C. 1437g(d)(3)) or any other provision of law or regulation mandating the operation of the housing as public housing, or under terms and conditions applicable to public housing, for a specified period of time.

§ 905.306 Obligation and expenditure of Capital Fund grants.

(a) *Obligation.* A PHA shall obligate each Capital Fund grant, including formula grants, Replacement Housing Factor (RHF) grants, Demolition and Disposition Transitional Funding (DDTF) grants, and natural disaster grants, no later than 24 months after, and emergency grants no later than 12 months after, the date on which the funds become available to the PHA for obligation, except as provided in paragraphs (c) and (d) of this section. However, a PHA with unobligated funds from a grant shall disregard this requirement for up to not more than 10 percent of the originally allocated funds from that grant. The funds become available to the PHA when HUD executes the CF ACC Amendment. With HUD approval, and subject to the availability of appropriations, the PHA can accumulate RHF grants for up to 5 years or until it has adequate funds to undertake replacement housing. The PHA shall obligate 90 percent of the RHF grant within 24 months from the date that the PHA accumulates adequate funds, except as provided in paragraph (c) of this section.

(b) *Items and costs.* For funds to be considered obligated, all items and costs must meet the definition of “obligation” in § 905.108 of this part.

(c) *Extension to obligation requirement.* The PHA may request an extension of the obligation deadline, and HUD may grant an extension for a period of up to 12 months, based on:

- (1) The size of the PHA;
- (2) The complexity of the CFP of the PHA;

(3) Any limitation on the ability of the PHA to obligate the amounts allocated for the PHA from the Capital Fund in a timely manner as a result of state or local law; or

(4) Any other factors that HUD determines to be relevant.

(d) *HUD extension for other reasons.* HUD may extend the obligation deadline for a PHA for such a period as HUD determines to be necessary, if HUD determines that the failure of the PHA to obligate assistance in a timely manner is attributable to:

(1) Litigation;

(2) Delay in obtaining approvals from the Federal Government or a state or local government that is not the fault of the PHA;

(3) Compliance with environmental assessment and abatement requirements;

(4) Relocating residents;

(5) An event beyond the control of the PHA; or

(6) Any other reason established by HUD by notice in the FEDERAL REGISTER.

(e) *Failure to obligate.* (1) For any month during the fiscal year, HUD shall withhold all new Capital Fund grants from any PHA that has unobligated funds in violation of paragraph (a) of this section. The penalty will be imposed once the violations of paragraph (a) are known. The PHA may cure the noncompliance by:

(i) Requesting in writing that HUD recapture the unobligated balance of the grant; or

(ii) Continuing to obligate funds for the grant in noncompliance until the noncompliance is cured.

(2) After the PHA has cured the noncompliance, HUD will release the withheld Capital Fund grant(s) minus a penalty of one-twelfth of the grant for each month of noncompliance.

(f) *Expenditure.* The PHA shall expend all grant funds within 48 months after the date on which funds become available, as described in paragraph (a) of this section. The deadline to expend funds may be extended only by the period of time of a HUD-approved extension of the obligation deadline. No other extensions of the expenditure deadline will be granted. All funds not expended will be recaptured.

§ 905.308 Federal requirements applicable to all Capital Fund activities.

(a) The PHA shall comply with the requirements of 24 CFR part 5 (General HUD Program Requirements; Waivers), 2 CFR part 200, and this part.

(b) The PHA shall also comply with the following program requirements.

(1) *Nondiscrimination and equal opportunity.* The PHA shall comply with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, the Department's generally applicable nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a) and the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*), and its implementing regulations at 24 CFR parts 40 and 41. The PHA shall affirmatively further fair housing in its use of funds under this part, which includes, but is not limited to, addressing modernization and development in the completion of requirements at 24 CFR 903.7(o).

(2) *Environmental requirements.* All activities under this part are subject to an environmental review by a responsible entity under HUD's environmental regulations at 24 CFR part 58 and must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and the related laws and authorities listed at 24 CFR 58.5. HUD may make a finding in accordance with 24 CFR 58.11 and may perform the environmental review itself under the provisions of 24 CFR part 50. In those cases where HUD performs the environmental review under 24 CFR part 50, it will do so before approving a proposed project, and will comply with the requirements of NEPA and the related requirements at 24 CFR 50.4.

(3) *Wage rates.* (i) Davis-Bacon wage rates. For all work or contracts exceeding \$2,000 in connection with development activities or modernization activities (except for nonroutine maintenance work, as defined in § 905.200(b)(5) of this part), all laborers and mechanics employed on the construction, alteration, or repair shall be paid not less than the wages prevailing in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3142).