

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR-4423-P-06]

RIN 2577-AB87

Allocation of Funds under the Capital Fund; Capital Fund Formula; Proposed Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement, as required by statute, a new formula system for allocation of funds to public housing agencies for their capital needs. As also required by statute, this proposed rule was developed through negotiated rulemaking procedures.

DATES: *Comments Due Date.* October 14, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT:

William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500; telephone (202) 708-1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal information relay service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105-276, approved October 21, 1998) (referred to as the "Public Housing Reform Act") amends section 9 of the U.S. Housing Act of 1937 to provide a "Capital Fund," to be established by HUD for the purpose of making assistance available to public housing agencies (PHAs) to carry out capital and management activities. Amended section 9 requires HUD to

develop a formula for determining the amount of assistance provided to PHAs from the Capital Fund for a Federal fiscal year, and the formula is to include a mechanism to reward performance. The statute also requires that the Capital Fund formula is to be developed through negotiated rulemaking procedures.

On March 19, 1999 (64 FR 13533), HUD published a notice of its intent to establish a negotiated rulemaking committee for the Capital Fund, and in this notice identified a list of possible interested individuals and organizations to serve on the negotiated rulemaking committee. The list of possible interested individuals and organizations included public housing agencies, national organizations representing public housing agencies, residents organizations, advocates for low-income housing, and other housing experts.

On April 26, 1999 (64 FR 20234), HUD published the list of members of the negotiated rulemaking committee and announced its first set of meetings. The members participating in the negotiated rulemaking procedure for the Capital Fund formula are:

• National Housing Associations

Council of Large Public Housing Authorities (CLPHA)
National Association of Housing and Redevelopment Officials (NAHRO)
Public Housing Authorities Directors Association (PHADA)
National Organization of African Americans in Housing (NOAAH)
National Low Income Housing Coalition

• Housing Authorities

Philadelphia Housing Authority, Philadelphia, PA
Chicago Housing Authority, Chicago, IL
Dallas Housing Authority, Dallas, TX
Puerto Rico Public Housing Administration, San Juan, PR
Seattle Housing Authority, Seattle, WA
New York City Housing Authority, New York, NY
Dayton Metropolitan Housing Authority, Dayton, OH
Jersey City Housing Authority, Jersey City, NJ
San Diego Housing Commission, San Diego, CA
Macon Housing Authority, Macon, GA
Sanford Housing Authority, Sanford, ME
Housing Authority of the City of San Benito, San Benito, TX
City of La Junta Housing Authority, La Junta, CO
Housing Authority of the Town of Laurinburg, Laurinburg, NC
Madison Housing Authority, Madison, NJ

• Tenant and Community Organizations

Guinotte Manor Tenant Association, Kansas City, MO
Center for Community Change, Washington, DC
Hillside Family Resource Center, Milwaukee, WI
Mount Pleasant Estates Tenant Association, Newark, NJ

• Other Groups

National Housing Conference
Fannie Mae

• Federal Government

U.S. Department of Housing and Urban Development

The negotiated rulemaking committee ("the committee") first convened on April 28 and 29, 1999. Additional committee meetings were held on May 11-12, May 25-26, June 17-18, June 23-24, July 8-9, July 26-27, and August 3-4, 1999.

As part of its deliberation of formula models and formula components, the committee considered at length a study conducted on capital needs in public housing by a consulting firm. The study included physical inspections of public housing at 219 PHAs throughout the country including 684 developments containing 229,973 units. The study found that the existing modernization needs of public housing remain well over twenty billion dollars.

The formula proposed by the committee in this rule is based, in part, on this study. The study, however, contained some limitations in scope, required inspector judgment regarding the necessity of modest upgrades, was not designed to cover some aspects of modernization such as the reconfiguration of units where needed, necessarily had to estimate future needs based on experience with respect to other housing stock rather than direct observations, and could not, in itself, answer the question how the formula should address differences in needs among individual housing authorities. Given the limitations of the study, the committee decided to limit any funding reductions in going from the old to the new formula to six percent of a PHA's Federal Fiscal Year 1999 formula share for comparable units.

The Capital Fund formula proposed in this rule fulfills the statute's mandate of including a mechanism to reward performance. The proposed formula also provides for a replacement housing factor, in recognition that funding for this purpose will facilitate demolition of obsolete housing and allow some of the remaining housing needs in the affected communities to be addressed.

In its development of the proposed formula, the committee discussed at substantial length the importance of resident participation to the success of public housing, including a PHA's capital programs. The committee noted that the Public Housing Reform Act places value on resident participation by requiring at least one resident on the PHA Board of Commissioners, resident involvement in the PHA Plan process (through Resident Advisory Boards) and additional involvement as reflected in HUD's resident participation regulations (24 CFR part 964). Accordingly, measures to promote more effective resident participation will be categorized as eligible Capital Fund management improvement expenses, and also will be categorized as eligible public housing operating expenses under the appropriate regulations. Examples of eligible capital fund management improvement expenses include but are not limited to reasonable: staff support, outreach, training, meeting and office space, childcare, transportation, access to computers, provided all such expenses are directly related to Capital Fund activities. HUD may provide more specifics in further regulations or notices.

The Committee went further and recommended the need for additional standards for resident participation which can be enforced by HUD. Additional standards need to be adopted through a separate rule. HUD has committed to undertake a rulemaking process regarding additional standards for resident participation and promulgate any necessary rules during the coming fiscal year. To further promote effective public housing programs including resident participation, HUD will: conduct training for resident organizations and housing authorities on the new Public Housing Reform Act; and clarify in the PHA Plan regulation that reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

II. Overview of the Capital Fund Formula

The following provides an overview of the key components of the Capital Fund Formula.

(1) The proposed Capital Fund formula contains a provision for emergency funding, as did the formula for allocation of funds under section 14 of the U.S. Housing Act of 1937 (USHA) (section 14 funds). Section 519(k) of the Public Housing Reform Act (section 9(k) of the USHA) provides for a set-aside of up to two percent of the available Capital Fund and Operating Fund dollars for emergencies, other disasters, and housing needs related to the settlement of litigation, and additional funds that the Secretary may reserve for purposes specified in section 9(k). (See § 905.10(b) of proposed rule.)

(2) The proposed rule also provides for formula allocation based on relative need, similar to that provided by the formula for allocation of section 14 funds. (See § 905.10(c) of proposed rule.)

(3) The formula for allocation of section 14 funds included allocation for "backlog needs." The proposed Capital Fund formula contains an allocation for "existing modernization needs." (See § 905.10(d) of proposed rule.)

(4) The proposed Capital Fund formula contains an allocation for "accrual needs," which is modeled on the "accrual needs" provision of the section 14 formula. (See § 905.10(e) of proposed rule.)

(5) The proposed Capital Fund formula provides for calculation of the number of units, as did the prior formula for allocation of section 14 funds. (See § 905.10(f) of the proposed rule.)

(6) The proposed Capital Fund formula sets out the method for computation of formula shares under the CFF. (See § 905.10(g) of the proposed rule.)

(7) The proposed Capital Fund formula provides for a limit or "cap" on the amount of capital funding that a PHA may lose as a result of the transition to the new CFF from the former formula for section 14 funds. The proposed rule provides that for comparable units, no PHA can lose more than 6% of its formula share in going from the old to the new formula. (See § 905.10(h) of the proposed rule.)

(8) The proposed Capital Fund formula also provides a replacement housing factor. The proposed rule provides that for units that are lost from the formula system because of demolition, disposition or conversion, these units will be funded only for purposes of replacement housing for 5 years and then for another 5 years if the planning, leveraging, obligation and expenditure requirements are met. The proposed rule provides that 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 of the second 5-year period, the PHA must obtain a firm commitment of substantial additional funds other than public housing funds for replacement housing. (See § 905.10(i) of the proposed rule.)

The proposed rule provides that PHAs are required to obligate assistance received for replacement housing within: (1) 24 months from the date that funds become available to the PHA; or (2) with specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing. The proposed rule also provides that to the extent the PHA has not obligated any funds provided as a result of the replacement housing factor within the times specified by the rule or expended such funds within a reasonable time, the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor shall be reduced. (See § 905.10(i)(7) of the proposed rule.)

(9) Under the proposed CFF, the results of the new formula (the CFF) and the old formula (the formula for section 14 funds), the capping, and the replacement housing factor yield a base formula amount. The base formula for each PHA is then adjusted depending on whether the PHA is a high performer. The proposed rule includes a performance reward factor that provides PHAs that are designated high performers under the Public Housing Assessment System (PHAS) will receive 3% above their base formula amount in the first five years these performance rewards are given, and 5% above their base formula amount in future years. This methodology anticipates that any new performance measurement system will mature over time. This increase above the base formula amount is subject to the condition that for each year a performance reward increase is provided, non-high performers lose no more than 5% of their base formula amount in the redistribution of formula funds from non-high performers to high performers. (See § 905.10(j) of the proposed rule.)

III. Justification for Reduced Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule. The Public Housing Reform Act contemplates that the new Capital Fund formula will be effective Federal Fiscal

Year 2000. In an effort to have a final formula in place as close to beginning of that fiscal year as possible, and given that the formula was developed through the negotiated rulemaking process, in which representatives of all affected parties participated, the Department believes that a 30-day public comment period is justified under these circumstances.

IV. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would implement a new system for formula allocation of funds to PHAs for their capital needs. The new system is established to provide minimum impact on all PHAs, small and large. The new formula provides that no PHA can lose more than 6% of its formula share for comparable units in going from the old to the new formula. Accordingly, the

formula will not have a significant economic impact on any PHA. Notwithstanding HUD's determination that this proposed rule would not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would provide a new system of formula allocation of assistance to PHAs for their capital needs. As a result, the proposed rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

List of Subjects in 24 CFR Part 905

Grant programs—housing and community development, Modernization, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, part 905 is proposed to be added to title 24 of the Code of Federal Regulations as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

Authority: 42 U.S.C. 1437g and 3535(d).

§ 905.10 Capital Fund formula (CFF).

(a) *General.* This section describes the formula for allocation of capital funds to PHAs. The formula is referred to as the Capital Fund formula (CFF).

(b) *Emergency reserve and use of amounts.* (1) In each Federal fiscal year after Federal Fiscal Year (FFY) 1999, from amounts approved in the appropriation act for funding under this part, HUD shall reserve an amount not to exceed that authorized by 42 U.S.C.

1437g(k), for use for assistance in connection with emergencies and other disasters, and housing needs resulting from any settlement of litigation, and may reserve such other amounts for other purposes authorized by 42 U.S.C. 1437g(k).

(2) Amounts set aside under paragraph (b) of this section may be used for assistance for any eligible use under the Capital Fund, Operating Fund, or tenant-based assistance in accordance with section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

(3) The use of any amounts as provided under paragraph (b) of this section relating to emergencies (other than disasters and housing needs resulting from settlement of litigation) shall be announced through **Federal Register** notice.

(c) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraph (b) of this section, HUD shall allocate the amount remaining in accordance with the CFF. The CFF measures the existing modernization needs and accrual needs of PHAs.

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

(1) *Determination of existing modernization need.* (i) *Statistically reliable data are available.* Where HUD determines that statistically reliable data concerning the existing modernization need identified in paragraph (d) of this section are available for individual PHAs, HUD will base its allocation of the Capital Fund amount on direct estimates of the existing modernization need, based on the most recently available, statistically reliable data. The PHAs of the cities of New York City and Chicago are covered by paragraph (d)(1)(i) of this section.

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the existing modernization need identified in paragraph (d) of this section are not available for individual PHAs, HUD will base its allocation on estimates of the existing modernization need using the factors described in paragraph (d)(2) of this section.

(2) *For PHAs greater than or equal to 250 or more units in FFY 1999,* estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development

characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 4604.7);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 10.17);

(C) The proportion of units in a development in buildings completed in 1978 or earlier. In the case of acquired developments, HUD will use the Date of Full Availability (DOFA) date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: 4965.4);

(D) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: -10608);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 2703.9);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: -269.4);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: -1709.5);

(H) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: 246.2)

(ii) An equation constant of 13851.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1999, or thereafter, will be considered to have a zero existing modernization need.

(B) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1999, or thereafter, will be considered by HUD to have a zero existing modernization need.

(3) *For PHAs with less than 250 units in FFY 1999,* estimates of the existing modernization need will be based on the following:

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

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 1427.1);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 24.3);

(C) The proportion of units in a development in buildings completed in

1978 or earlier. In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will 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 co-efficient: -1389.7);

(D) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: -20163);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 6157.7);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 4379.2);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: 3747.7);

(H) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: -2073.5)

(ii) An equation constant of 24762.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1999, or thereafter, will be considered to have a zero existing modernization need.

(B) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1999, or thereafter, will be considered by HUD to have a zero existing modernization need.

(4) *Calibration of existing modernization need for the rolling three-year average of the cost index of rehabilitating property in the area.* The estimated existing modernization need, as determined under paragraphs (d)(1) (d)(2) or (d)(3) of this section, shall be adjusted by the values of the rolling three-year average of the cost index of rehabilitating property in the area.

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

(1) *Determination of accrual need.* (i) *Statistically reliable data are available.* Where HUD determines that statistically reliable data concerning accrual need identified in paragraph (e) of this section are available for individual PHAs, HUD will base its allocation of the Capital Fund amount on direct estimates of accrual need, based on the most recently available, statistically reliable data. The PHAs of the cities of New York City and Chicago are covered by paragraph (e)(1)(i) of this section.

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning accrual need identified in paragraph (e) of this section are not available for individual PHAs, HUD will base its allocation on estimates of accrual need using the factors described in paragraph (e)(2) of this section.

(2) *For PHAs greater than or equal to 250 or more units,* estimates of the accrual need will be based on the following:

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

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 324.0);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 93.3);

(C) The age of a development as of FFY 1998, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will 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 co-efficient: -7.8);

(D) Whether the development is a family development. (Equation co-efficient: 184.5);

(E) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: -252.8);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: -121.3);

(G) PHA size of 6600 or more units in FFY 1999. (Equation co-efficient: -150.7);

(H) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 28.4);

(I) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: -116.9);

(J) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: 60.7)

(ii) An equation constant of 1371.9,

(3) *For PHAs with less than 250 units,* estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development

characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 325.5);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 179.8);

(C) The age of a development as of FFY 1998, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: -9.0);

(D) Whether the development is a family development. (Equation co-efficient: 59.3);

(E) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: -1570.5);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: -122.9);

(G) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: -564.0);

(H) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: -29.6);

(I) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: -418.3)

(ii) An equation constant of 3193.6.

(4) *Calibration of accrual need for the rolling three year average of the cost index of rehabilitating property in the area.* The estimated accrual need, as determined under either paragraph (e)(2) or (e)(3) of this section, shall be adjusted by the values of the rolling three-year average of the cost index of rehabilitation.

(f) *Calculation of number of units.* (1) *General.* For purposes of determining the number of a PHA's public housing units, and the relative modernization needs of PHAs, HUD shall count as one unit each public housing and section 23 bond-financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under Turnkey III program. In addition, HUD shall count as one unit each existing unit under the Mutual Help program. Units that are added to an PHA's inventory will be added to the overall unit count so long as the units are under ACC amendment and have reached DOFA by the date HUD establishes for

the Federal Fiscal Year in which the CFF is being run (hereafter called the "reporting date"). Any such increase in units shall result in an adjustment upwards in the number of units under the CFF. New units reaching DOFA after the reporting date will be counted for CFF purposes as of the following Federal Fiscal Year.

(2) *Conversion of units.* (i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as the units are under ACC amendment by the reporting date;

(ii) For purposes of calculating the number of converted units, HUD shall regard the converted size of the unit as the appropriate unit count (e.g., a unit that originally was counted as one unit under paragraph (f)(1) of this section, but which later was converted into two units, shall be counted as two units under the ACC);

(iii) For purposes of calculating the number of converted units, HUD shall make no adjustments prior to the first 10 units lost or gained as a result of conversion in a development.

(3) *Reduction of units.* For developments losing units as a result of demolition, disposition or conversion, the number of units on which capital funding is based will be the number of units reported as eligible for capital funding as of the reporting date. Units are eligible for funding until they are removed due to demolition, disposition or conversion in accordance with a schedule approved by HUD.

(g) *Computation of formula shares under the CFF.* (1) *Total estimated existing modernization need.* The total estimated existing modernization need of a PHA under the CFF is the result of multiplying for each development 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 development needs.

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

(3) *PHA's formula share of existing modernization need.* A PHA's formula share of existing modernization need under the CFF 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 CFF 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 CFF 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%).

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

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

(i) *Replacement housing factor to reflect formula need for developments with demolition, disposition, or conversion occurring on or after October 1, 1998.* (1) *Replacement housing factor generally.* PHAs that have a reduction in units attributable to demolition, disposition, or conversion of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the CFF calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (i)(5) of this section.

(2) *When applied.* The replacement housing factor will be added, where applicable, for the first 5 years after the reduction in units described in paragraph (i)(1) of this section, and will be added 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 replacement housing factor.* The replacement housing factor consists of the difference between the CFF share without the CFF share reduction of units attributable to demolition, disposition or conversion, and the CFF share that resulted after the reduction of units attributable to demolition, disposition or conversion.

(4) *Replacement housing funding in FFY 1998 and 1999.* Units that received replacement housing funding in FFY 1998 will be treated as if they had received two 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 replacement housing factor.* A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(i) The PHA requests the application of the replacement factor;

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

(iii) The restored funding that results from the use of the replacement factor is used to provide replacement housing in accordance with the PHA's five-year PHA plan, as approved by HUD in accordance with part 903 of this chapter;

(iv) The PHA has not received funding for public housing units that will replace the lost units under the public housing development, Major Reconstruction of Obsolete Public Housing, HOPE VI programs, or

programs that otherwise provide for replacement with public housing units;

(v) A PHA that has been determined by HUD to be troubled that is not already under the direction of HUD or a court-appointed receiver, in accordance with part 902 of this chapter, must use an Alternative Management Entity as defined in part 902 of this chapter for development of replacement housing and must comply with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(vi) Any development of replacement housing by any PHA must be done in accordance with applicable HUD requirements and regulations.

(6) *Failure to provide replacement housing in a timely fashion.* If the PHA does not use the restored funding that results from the use of the replacement housing factor to provide replacement housing in a timely fashion, as outlined in paragraph (i)(7)(i) of this section and in accordance with applicable HUD requirements and regulations, and make reasonable progress on such use of the funding, in accordance with HUD requirements and regulations, 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 replacement housing factor funds within 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 replacement housing factor 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 replacement housing factor within the times required by this paragraph, or expended such funds within a reasonable time, the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor shall be reduced.

(j) *Performance reward factor.* PHAs that are determined as high performers under the Public Housing Assessment System (PHAS) for their most recent fiscal year can receive 3% in the first five years these awards are given (for any year in this 5-year period in which the performance reward is earned), and 5% above their base formula amount in future years (for any year in which the performance reward is earned), subject only to the condition each year 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. The first performance awards will be given based upon PHAS scores for PHA fiscal years ending December 31, 1999, March 31, 2000, June 30, 2000, and September 30, 2000, with PHAs typically having received those PHAS scores within approximately 3 months after the end of those fiscal years.

Dated: September 8, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

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