Chapter 1. QUALITY HOUSING AND WORK RESPONSIBILITY ACT (QHWRA) AND THE CAPITAL FUND

1.1. OBJECTIVE. The objective of this Chapter is to provide an understanding of how the Quality Housing and Work Responsibility Act has impacted the Capital Fund Program and process, how the Capital Fund formula works, and the relationship of the Capital Fund Program to the PHA Plan.

1.2. GENERAL OVERVIEW. Enacted on October 21, 1998, the Quality Housing and Work Responsibility Act of 1998 (QHWRA) provides substantial revisions to the laws governing the public housing and Section 8 programs. QHWRA substantially and permanently amends the United States Housing Act of 1937 (USHA). *(P.L. 105-276)* It should be noted that the USHA, as amended, remains in effect.

QHWRA is landmark legislation that made public housing reform a reality. The purpose of the QHWRA is to promote affordable, safe and healthy homes for low-income families by:

- Reducing the concentration of poverty in public housing and facilitating mixed-income communities;
- Protecting access to housing assistance for the poorest families;
- Supporting families making the transition from welfare to work;
- Raising performance standards for public housing agencies, and rewarding high performance;
- Transforming the public housing stock through new policies and procedures for demolition and replacement and mixed-finance projects, and through authorizing the HOPE VI revitalization program;
- Merging and reforming the Section 8 certificate and voucher programs, and allowing public housing agencies to implement a Section 8 homeownership program; and
- Supporting HUD management reform efficiencies through deregulation and streamlining and program consolidation.

This Chapter focuses specifically on how QHWRA has impacted the Capital Fund Program and process. Please note that there are proposed changes in the Capital Fund rule; PHAS scoring; TDC update and the submittal of the Annual/Five Year Plans and attachments in process at the time of release of this Guidebook

A. History of Capital Fund Program for Public Housing. The U. S. Housing Act of 1937 established the public housing program to provide low income housing to eligible households. Originally funds were provided only for construction, and PHAs funded repairs and improvements from rents. No subsidy was provided for operations, and there was no capital funding. But as the buildings aged, utility costs escalated, and rental income was limited, PHAs could no longer afford needed and extensive repairs. In 1968, HUD started funding repairs and renovations under a series of modernization programs. Highlights of HUD modernization and development programs are:

1) Comprehensive Improvement Assistance Program (CIAP). In 1980, the Housing and Community Development Act established the CIAP that focused on the comprehensive modernization of a development. By this time, many public housing developments were 30 to 40 years old and required major systems replacement and upgrades. CIAP was a competitive program under which PHAs annually submitted applications for funds.

2) Comprehensive Grant Program (CGP). CGP was authorized by the Housing and Community Development Act of 1987 to provide formula funding to meet the capital needs of larger PHAs rather than have them compete for funds. This was a critical change to the program in that it provided PHAs with more predictable annual funding. This led to the development of both immediate and long-range modernization plans for developments, based on the urgency and scale of need.

   For Federal Fiscal Year (FFY) 1992, PHAs with more than 500 units received funding under CGP. In FFY 1993, the threshold was lowered to include PHAs with more than 250 units of public housing. PHAs receiving CGP funding had to develop comprehensive plans that identified existing physical and management needs and establish a five-year action plan that prioritized needs based on the anticipated funding levels. Residents and governments were involved in the development of the plan. Small PHAs continued to compete for funding under CIAP.

3) Development. The Public Housing Development program provided funds to PHAs for the development of additional public housing units. For many years Congress provided separate appropriation for public housing development and public housing modernization. .Congress has not provided new funding for public housing development since FY 1994. However, under the new Capital Fund Program PHAs can use Capital Funds and HOPE VI funding flexibly for development purposes (Section 9 (d) of the 1937 Act), as amended.

4) Key Changes to the Capital Fund. QHWRA completely revised the program for providing capital funding to PHAs, including consolidating earlier capital programs (e.g., CIAP, CGP, and the Public Housing Development Program) into a single formula grant know as the Capital Fund Program (CFP). Starting in FFY 2000, funds for capital and management activities were allocated under the new CFP. Highlights of the key changes to the Capital Fund Program include:

1) New formula. Funds are distributed by formula to all PHAs regardless of size. As mandated by QHWRA, the new formula was developed through negotiated rulemaking. (See the description below for details.)

2) Total development costs. QHWRA amends the definition of total development costs (TDC) to:

- Exclude any costs associated with the demolition of, or remediation of environmental hazards associated with, public housing units that will not be replaced on the project sites.

- Use only public housing capital assistance in the calculation of TDC for the development of public housing (excluding other non-PHA sources such as CDBG, tax credit equity, housing trust funds, etc.)

- Limit the amount of capital assistance that a PHA uses for housing construction costs (HCC) which include the actual hard costs for construction, builders' overhead and profit, utilities, and landscaping. .

3) Capital Fund Financing Program (CFFP). QHWRA permits PHAs to use their CFP funds for financing activities, such as debt service payments and usual and customary financing costs, for the development and modernization of public housing units. Such financing typically involves a pledge of future Capital Fund grants subject to appropriation of those funds.

4) PHA Plan. QHWRA creates the requirement for a PHA Five-Year Plan and an Annual Plan that is intended to serve as an operations, planning, and management tool for PHAs. Resident participation in the PHA planning process is required to help PHAs determine priorities for their capital programs.

5) Demolition and Disposition of Public Housing. QHWRA streamlines the application requirements for demolition and disposition and eliminates the requirement that a PHA replace, on a one-for-one basis, every unit that a PHA disposes or demolishes.

NOTE: HUD has published a proposed Capital Fund rule at part 905 that will include, in addition to the formula components, all general program requirements and applicable development (from part 941) and modernization requirements (from part 968).

1.3. CAPITAL FUND FORMULA DEVELOPMENT. QHWRA calls for the Capital Fund formula (as well as the Operating Fund and the Section 8 renewal formula) to be developed through negotiated rule making. Negotiated rule making is a mediated, open process through which an agency must negotiate face-to-face with interested parties to develop the regulation that will govern a specific provision.

A. Negotiated Rule Making for the Capital Fund. A negotiated rulemaking committee for the Capital Fund formula was formed in 1999 and its members included representatives from large and small PHAs, resident associations, and professional organizations. The committee held 16 public meetings beginning on April 16, 1999.

During the deliberations, committee members worked with HUD to develop a rule that allowed HUD to reasonably estimate PHAs' capital needs for HUD's annual budget request and fund distribution. The formula development was guided by the need for an equitable, predictable, adequate, and flexible formula that held PHAs accountable. The committee was also concerned with developing a formula that was simple to administer and replicable and encouraged resident participation. The CGP formula for large PHAs (more than 250 units) provided the starting point for the committee's discussion. The committee examined the limitations of the CGP formula to estimate total capital need using a study completed by Abt Associates, a contractor. The capital need study focused on two key measures of need: existing modernization needs and accrual needs.

1) Existing modernization needs. Existing modernization needs are the cost of repairs and replacements beyond ordinary maintenance required to make the housing decent and sustainable with modest amenities. This includes all capital costs associated with four types of repairs and replacements:

    - Repairing or replacing systems with immediate repair needs to restore them to working condition, not including costs for routine maintenance.
    - Additional costs associated with upgrades to some systems, but excluding major reconfiguration of units.
    - Additions to other systems.
    - Replacing systems that have reached the end of their useful life, even if they are still in working order.

    The study estimated existing needs (in 1999) at approximately $22 billion. (This is often referred to as the "backlog". This type of need is associated with older projects and newly constructed projects have no backlog need.)

2) Accrual needs. Accrual needs are the costs needed each year to cover expected ongoing repairs and replacements beyond ordinary maintenance, assuming that existing modernization needs are met. The study estimated that each year approximately $2 billion is required to address ongoing accrual needs.

Similar to the development of the CGP formula in the early 1990s, model-based estimates (using a nationally representative sample of properties) were applied to the full stock of public housing to obtain development-level estimates of need. The committee analyzed several formula models before deciding on the data to be used for the Capital Fund formula. Efforts of the negotiated rulemaking committee resulted in a proposed capital fund rule that was issued for public comment on September 19, 1999. HUD published the final rule on March 16, 2000 after analyzing the comments received on the proposed rule. [24 CFR Part 905 "Allocation of Funds under the Capital Fund Formula, Final Rule."]

B. Key Elements of the New Capital Fund Formula (CFF). The formula for allocation of capital funds to PHAs provides for an emergency reserve for assistance with emergencies and natural disasters (see Chapter 4), and for housing needs resulting from any settlement of litigation. The remaining funds are distributed based on relative needs, with 50 percent of the available Capital Fund amount allocated to modernization needs and 50 percent allocated to accrual needs. Highlights of the CFF include:

1) Six Percent Cap. This provision limited the capital funds lost in transitioning from the old distribution procedure to the new capital fund formula. A PHA's funding share under CFF must be at least 94 percent of the share funded in FFY 1999 for eligible units.

2) Replacement Housing Factor (RHF). During the negotiated rulemaking process for the capital fund formula, concerns were raised about the financial impact on PHAs that lost significant numbers of public housing units through the demolition of obsolete projects. As a result, an "RHF" was included in the formula. The RHF is designed to provide capital funds for PHAs to replace at least some of the units they would otherwise lose completely through demolition or disposition. The replacement factor is included in the formula for the first five years after a PHA removes units that were approved by HUD for demolition or disposition or for units that meet the requirements of the de minimis exception to the demolition requirements. If the PHA meets planning, leveraging, obligation, and expenditure regulations, the RHF funding will be provided for an additional five years. RHF grant funds must be used to fund building or acquisition of public housing replacement housing; these funds are not to be used for modernization. Please see updated Guidebook comments on RHF funding.

3) Limitations on New Construction. QHWRA puts a limitation on the number of public housing units that can be developed by any PHA. Known as the "Faircloth Amendment", a PHA must comply with Section 9(g)(3) of the Act which provides that a PHA may not construct any new

units if the construction would result in a net increase from the number of public housing units owned, assisted or operated by the PHA on October 1, 1999, including any public housing units demolished as a part of any revitalization effort. This provision does not apply to the development of additional public housing through the acquisition (with or without rehabilitation) of units from the open market. The PHA may construct new units in excess of the number of units in its inventory on October 1, 1999, but will not be eligible for additional funding under the Capital or Operating Fund formulas.

4) Performance Reward for High Performers. The Capital Fund regulation provides for a performance reward as a factor in the annual Capital Fund formula calculation. High performers, as designated under the Public Housing Assessment System (PHAS) for their most recent fiscal year, can receive an extra three percent above the base formula amount in any year that the designation is earned during the first five years the award is given. PHAs that are High-Performers will receive a five percent reward after the initial five year period of the Capital Fund formula. [See 24CFR 905.10(j)]. It is the Department's intention to initiate a 5% performance reward with the distribution of the FY 2008 Capital Fund awards.

5) Moving to Work (MTW) Exceptions. MTW is a demonstration program that was authorized by Section 204 of the 1996 Appropriations Act. It provides participating PHAs (as of Fall 2007, 25 sites were participating) flexibility to design and test innovative, locally-designed housing and self-sufficiency strategies for low-income families by allowing exemptions from existing public housing and Housing Choice Voucher laws and rules. Several of the MTW agencies are "block grant agencies" which are permitted to combine operating, capital, and tenant-based assistance funds into a single agency-wide funding source, as approved by HUD. Largely because of these special funding arrangements, the block grant sites have different reporting requirements. In lieu of the PHA Annual Plan Process required under QHWRA, the block grant sites prepare an Annual MTW Plan and Annual MTW Report. These documents replace major reporting requirements. Additionally, some of the block grant agencies do not have to report on obligations and expenditures for modernization funds, as required by QHWRA. Some MTW agencies also have agreements that provide that their capital formula share is calculated based on the

previously existing formula. Please note that many MTW contracts are or have expired and as a condition of renewal, some conditions may have changed.

6) How Stock Realignment Impacts Capital Fund Formula Calculation. QHWRA has substantially enhanced PHAs' abilities to reposition their portfolios of public housing developments through the removal of obsolete units to the leveraged financing of public housing modernization activities as well as new construction. Key changes facilitating portfolio repositioning include the removal of the one-for-one replacement requirement and the use of the mixed-finance development approach (to leverage non-public housing funds) and the Capital Fund Financing program (CFFP). It is important to understand how various stock realignment activities, which must be described in the PHA Plan, impact the Capital Fund formula calculation.

1) Removal of Units. Loss of units can result from the demolition, disposition, or voluntary/mandatory conversion of public housing units. The PHA must meet the following HUD reporting or approval requirements to officially remove public housing units:

- A HUD-approved application for demolition or disposition;
- A HUD-approved HOPE VI Revitalization Plan that contains a demolition approval;
- A HUD-approved plan for removal (required/voluntary or mandatory conversion) of public housing units under Section 33 of the U.S. Housing Act of 1937, as amended, or under Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, respectively; or
- The PHA has reported to HUD's Special Applications Center (SAC) on form HUD-52860, Demolition/Disposition Application, that it is demolishing the lesser of five units or five percent of the units in its inventory during a five-year period. (QHWRA provides

that HUD's approval of demolition in such instance is not required.)

2) Impact on Formula Calculation. As public housing units are demolished (per HUD-approved processes above), a PHA must report this information in the Public and Indian Housing Information Center (PIC) system. The Capital Fund formula is computed annually based on data on buildings and units under management as reported in the PIC as of September 30th of the preceding year. Units lost through demolition or disposition are not included in the Capital Fund formula calculations. However, those units that have been demolished or disposed of but are not replaced by new public housing units funded by HOPE VI, public housing disaster grants, proceeds of disposition etc. are eligible to receive RHF grants. (See Chapter 5, Replacement Housing Factor, for details.) Per the Capital Fund formula negotiated rulemaking, public housing units developed or acquired after 1991 are not eligible to receive the modernization portion of the formula (backlog) but they are included in the accrual calculation.

3) Capital Fund Grants Processing. HUD provides PHAs with information and guidance on each fiscal year's Capital Fund allocation. The Annual Contribution Contract (ACC) Amendments for the year's Capital Fund awards including RHF grants are available electronically on the HUD website along with processing procedures and a timeline with processing deadlines, Office of Public and Indian Housing, Office of Capital Improvements, at:

http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm

In some instances, PHAs may have as many as three grants in one year and, therefore, three Annual Contributions Contract (ACC) Amendments (e.g., an Amendment for the formula grant, an Amendment for the first increment RHF grant, and an Amendment for the second increment RHF grant). PHAs must sign and date each Amendment. The local HUD Field Offices must receive the ACC Amendments along with the amended Annual Statement based on the actual Capital Fund grant by the date specified in the timeline that HUD posts on the website. The effective date of the Capital Fund grant is the date the Field Office signs and executes the ACC Amendment. (See Chapter 2, Obligations and Expenditures, for details.)

1.4. QWHRA REQUIREMENTS FOR THE CAPITAL FUND PROGRAM

A. Eligible Activities. The Capital Fund provides funds, annually, to PHAs for the development, financing, and modernization of public housing developments and for management improvements. Given this purpose, the Capital Fund must directly support public housing rental projects or residents under an ACC. The funds may not be used for luxury improvements, direct social services, costs funded by other HUD programs, and ineligible activities as determined by HUD on a case-by-case basis. Eligible activities include:

- Development, financing, and modernization of public housing projects (redesign, reconstruction, and accessibility improvements);
- Development of mixed-finance projects;
- Vacancy reduction;
- Deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment;
- Planned code compliance;
- Demolition and replacement of units;
- Homeownership activities;
- Resident relocation;
- Security and safety of residents;
- Capital expenditure to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to improve resident participation;
- Management improvements; and
- Transfers of funds to operations.

B. Set aside for Emergency Natural Disasters. The HUD Secretary can set aside annually not more than two percent of the total amount available from capital and operating funds for the current fiscal year. The Secretary is authorized to use these funds in connection with:

- Emergencies and natural disasters (See Chapter 4, Emergencies and Natural Disasters, for details);
- Housing needs resulting from any settlement of litigation;
- Assistance for an eligible use under the operating fund or the capital fund established by QHWRA; and
- Tenant-based assistance in accordance with Section 8.

With respect to any fiscal year, the Secretary may carry over not more than a total of $25 million in un-obligated amounts set aside under this subsection for use in connection with these activities during the succeeding fiscal year.

C. Use of Capital Funds for Operations. QHWRA offers PHAs more flexibility in using Capital Funds, offering small and large PHAs the ability to use capital funds for activities eligible under the operating fund program.

1) Large PHAs. PHAs with more than 250 dwelling units can budget up to 20 percent of capital funds for activities that are eligible under the Operating Fund program. The PHA's plan to use Capital Fund for operation must be addressed in the PHA Plan.

2) Small PHAs. PHAs with fewer than 250 public housing units that are not troubled have full flexibility in the use of capital and operating funds. PHAs can use up to 100 percent of funds from the Capital Fund program for activities that are eligible under the Operating Fund as long as the PHA is not designated as 'troubled' under PHAS and is operating and maintaining its public housing units in safe, clean and healthy conditions. The PHA's plan to use Capital Fund for operation must be addressed in the PHA Plan.

3) PHAs Affected by Hurricane Katrina or Rita. Section 901 of the Emergency Supplemental Appropriations (PL 109-148) provides that PHAs in the most heavily impacted areas of Louisiana and Mississippi, declared by the President to be a major disaster in connection with Hurricanes Katrina and Rita, are eligible for full fungibility of funds

provided by HUD for Capital Funds, Operating Funds, and Housing Choice Vouchers. PHAs interested in this full fungibility were required to submit 901 Fungibility Plans for HUD approval.

PHAs Affected by Hurricane Katrina, Rita and Wilma. <u>PHAs in these HUD declared disaster areas were also allowed to submit notifications to HUD to use waivers of HUD regulations offered by the Department including three waivers that related to Capital Fund and HOPE VI Programs: (1) Waiver of the TDC for a specific timeframe;(2) Waiver of requirements to allow the use of RHF grants for modernization and homeownership; and (c) A 12-month extension of the Capital Fund grant's obligation and expenditure deadlines.</u>

D. Replacement Reserve Disallowed. Under CFR 968.112(f), replacement reserve funding is limited to the Comprehensive Grant Program (CGP) only. The CGP provided for reserve for replacement account funding, per BLI 1490. QHWRA removed the provision under the Capital Fund.

E. Obligation and Expenditure Requirements (See Chapter 2, Obligations and Expenditures, for requirements).

1) Start and End Dates. Sections 9(j) of the Act and 24 CFR Section 905.120 (the regulation) require a PHA to obligate its Capital Fund assistance within 24 months from (a) the date the funds are available to the PHA for modernization or development activities, or (b) the date the PHA accumulates adequate funds to undertake modernization, rehabilitation, or new construction of units. Capital Funds must be expended within 48 months from the date they are made available.

The obligation and expenditure start and end dates for RHF grants are based on the timelines in the HUD-approved RHF Plan. The obligation start date for an RHF grant with an approved RHF Plan is 30 days after the date proposed for the submission of the development proposal to the local HUD Field Office. (See Chapter 5, RHF, for details.)

2) Penalties and Sanctions for Slow Obligations and Expenditures. PHAs are required to obligate 90 percent of Capital Funds within 24 months of the date the funds are made available. Sections 9(j) of the Act and 24 CFR Section 905.120 provides sanctions for PHAs that do not obligate in a

timely manner. Specifically, HUD is to withhold a PHA's next Capital Fund grant(s) (i.e., formula, RHF, emergency and natural disaster grants) until the PHA obligates 90 percent of its past due grant. If the PHA is able to comply with the obligation requirement during the year, HUD will release the new Capital Fund grant(s). The penalty for noncompliance will be to reduce the new Capital Fund grant(s) by 1/12 for every month the PHA is in noncompliance.

3) Provisions for Extensions. Only the HUD Secretary, Deputy Secretary or the Assistant Secretary for Public and Indian Housing can approve extensions of the obligation deadline for Capital Fund grants. HUD determines the appropriate time period for the extension. Extensions are provided if HUD determines that the PHA's inability to obligate Capital Funds in a timely manner is attributable to:

- Litigation;
- Obtaining approvals of federal, state and local governments;
- Complying with environment assessment and abatement requirements;
- Relocating residents;
- An event beyond the control of the PHA; and
- Any other reason established by the Secretary by Notice published in the *Federal Register*.

The Secretary or Deputy Secretary may extend the time period under Section 9(j)(1) of the Act for an additional period not to exceed 12 months, based on the following:

- The size of the public housing agency;
- The complexity of the capital program of the public housing;
- Any limitations on the ability of the public housing agency to obligate the amounts allocated for the agency from the Capital Fund in a timely manner as a result of State or local law; or

- Such other factors the Secretary determines to be relevant.

All requests, regardless of fiscal year, for extensions of the deadlines must be received in Headquarters no later than 30 days prior to the obligation deadline for the grant in question.

Expenditure Deadlines for Capital Fund Grants. If a PHA fails to fully expend any Capital Fund grant (i.e., formula, RHF, emergency or natural disaster grant) by the expenditure deadline, HUD will immediately recapture any funds not expended by the deadline. There is no provision in the Act to extend the expenditure deadline date except where the Secretary or Deputy Secretary has previously approved an extension of the obligation deadline.

Note: Some MTW PHAs are exempt from the Capital Fund obligation and expenditure deadlines during the term of their MTW Agreements.

F. Capital Fund Financing Program (CFFP). PHAs that do not have enough funds in a single year to make all of the improvements necessary to adequately maintain their public housing are using the CFFP. Under CFFP, a PHA borrows private capital through direct loans from banks or through bond transactions, with security provided through a pledge of future year Capital Funds, subject to the availability of appropriations.

The loans or bonds are obligations of the PHA. HUD does not guarantee or insure these loans or bonds. The PHA obligation is subject to the availability of appropriations by Congress and compliance with statutory and regulatory requirements.

Consistent with Section 30 of the Act and the ACC, written HUD approval is required before PHAs may enter into loan agreements; issue such bonds which encumber public housing projects or portions thereof; or pledge public housing assets as collateral. Failure to obtain written HUD approval may result in sanctions against PHA Executive Directors, employees, or their Boards and could also result in ineligible costs and other sanctions.

In order to obtain HUD approval, a PHA must submit a financing proposal that includes a term sheet, financial documents, and a justification for the use of Capital Funds for financing. General guidelines for the CFFP program include:

- Approval. PHAs must request approval from the Deputy Assistant Secretary, Office of Public Housing Investments.

- Capital Fund Pledges. Generally no more than 33 percent of the PHA's current annual Capital Fund grant, adjusted for any proposed or planned demolition or disposition, or other activity that would result in a reduction of the PHA units count or otherwise reduce CFP funds appropriated or available to the PHA. All pledges are subject to the availability of appropriations.

- Term. Generally, no more than 20 years.

- Public Housing Requirements. Since the proceeds from a CFFP transaction are generated via the pledge and use of Capital Funds, HUD considers CFFP proceeds to be, for all intents and purposes, Capital Funds. Therefore PHAs must follow all statutory and regulatory requirements related to the Capital Fund Program in the development and implementation of their CFFP proposal.

- Other Financing/Approvals. If a PHA's proposed use of the CFFP proceeds would require other HUD approvals, separate proposals/submissions and approvals must be obtained. CFFP proposal approval can occur prior to other related approvals, but will be contingent upon those approvals, and generally will expire within 90 days of issuance.

In a Proposed Rule on Use of Public Housing Capital and Operating Funds for Financing Activities, financing proceeds may not be used for administration or COCC costs (other than in mixed-finance projects), management improvements, or required conversion projects.

The Office of Capital Improvements is available to provide technical assistance and additional information to PHAs. For additional information, go to: http://www.hud.gov/offices/pih/programs/ph/capfund/cffp.cfm

1.5. CAPITAL FUND RELATIONSHIP TO THE PHA PLAN

A. Purpose of Annual and Five-Year Plans and Role of the Capital Fund. [Section 511]. Section 511 of the QHWRA created the public housing agency Five-Year and Annual Plan requirement. Developing these plans requires PHAs to examine their existing operations and needs and to design long-range and short-range strategies to address those needs. <u>It is through the Annual Plan that a PHA receives capital funding</u>.

The PHA Plan, which is submitted in a standardized electronic format, serves as (a) a planning tool for PHAs, (b) a community guide to the PHA's policies, programs, and activities, and (c) a streamlined submission to HUD of grant and programmatic information.

B. Strategic Planning Tool. The PHA Plan is more than the completion of the plan template; it is a strategic planning document that defines how the PHA will function effectively as an asset manager over the long-term. It should involve a thoughtful and inclusive planning process that looks at the entire portfolio of public housing properties to determine how best to reposition those properties so they may be preserved as an affordable housing resource that best meets the needs of the community.

PHAs must proactively determine the appropriate long-range strategy for each property. These strategies include, but are not limited to: maintenance as is; modernization; disposition or sale (to public housing residents or other parties); demolition and mixed-finance redevelopment on site, possibly as a mixed-income community; acquisition of existing properties; and conversion to vouchers.

C. Basic Plan Requirements.

1) Five-Year Plan. The Five-Year Plan must describe the mission of the PHA to serve the needs of low-income, very low-income, and extremely very low-income families in its jurisdiction. It must include the PHA's long range goals and objectives for achieving its mission over the subsequent five years. To the extent possible, these goals and objectives should be quantifiable so that HUD, the PHA, and the public can better measure the success the PHA has in meeting its goals and objectives.

   The Five-Year Plan must be submitted once every five PHA fiscal years, no later than 75 days before the beginning of the PHA's fiscal year. PHAs are encouraged to update the Five-Year Plan every year as a good management practice. Any substantial deviation from a Five-Year Plan must be explained in the PHA's Annual Plan. [Sec. 903.7(r)]

2) Annual Plan. The Annual Plan provides details about the PHA's current operations, program participants, programs and services, and strategy for handling operational concerns, residents' concerns and program needs, programs and services for the upcoming fiscal year.

   One component of the Annual Plan details the PHA's Capital Fund activities and describes how the PHA proposes to use its Capital Funds including its RHF grant funds. The Capital Fund Program Annual

Statement/Performance and Evaluation Report is the PHA's submission for receipt of Capital Fund formula grants.

PHAs must also submit a Capital Fund Program Five-Year Action Plan that provides information for each large capital item (whether by development or PHA-wide) planned for the four PHA fiscal years following the fiscal year covered by the Annual Statement. "Large capital items" are defined as:

- Any work item that is 10 percent or more of the PHA's annual Capital Fund grant; or

- Any work item that is $1 million or more; except that a PHA, regardless of its size or the dollar amount of the annual grant, is not required to report any work items that are less than $25,000.

PHAs may include activities in addition to large capital items in the Five-Year Action Plan (e.g. management improvements, administration, or architectural/engineering costs) at their option. Capital Funds are available in a fiscal year to all PHAs that have an approved Capital Fund Five-Year Action Plan.

3) Environmental Review. The PHA can obligate Capital Funds for any activity in its Capital Fund Five-Year Action Plan, as long as an environmental review has been completed in conjunction with the Five-Year Action Plan. In cases where the PHA does not have enough specificity in the Five-Year Action Plan to conduct an environmental review, the environmental review must be conducted at a later time based on the activities in the PHA's Annual PHA Plan or Annual Statement. A PHA cannot obligate its Capital Funds in any given fiscal year until it has complied with HUD's environmental requirements.

4) Resident Participation. PHAs are required to establish one or more Resident Advisory Boards (RAB) to enable residents to advise the PHA in Plan development. RAB membership is comprised of individuals who reflect and represent the residents assisted by the PHA. The role of the RAB is to assist the PHA in developing the PHA Plan and in making any significant amendment or modification of the PHA Plan.

5) Impending Changes to PHA Plan. HUD intends to amend the Agency Plans regulation (24 CFR Part 903) to streamline the Annual and Five-Year Plan processes. HUD also proposes to amend these regulations to implement required revisions to the PHA Plans as a result of the Violence Against Women's Act (VAWA). HUD anticipates issuing a PIH notice that substantially streamlines the Annual and Five-Year Plan templates.

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D. Capital Fund Changes in the Plans. As described in 24 CFR 903.21, the PHA may amend or modify its Annual or Five-Year Plan after submitting the plan to HUD. The PHA may modify, amend or change any policy, rule, regulation or other aspect of its plan, including how Capital Funds are allocated by work item. Instances where plan changes regarding Capital Funds may or may not be required are:

1) "Significant Amendment" and "Substantial Deviation". If the modification or change is considered a "significant amendment" or "substantial deviation/modification" as defined by the PHA, then the PHA must comply with a number of requirements similar to those required at initial development and submission of the PHA Plan. The PHA must define what it considers to be a "Significant Amendment" and "Substantial Deviation" in its Plan.

In the Final Rule for the PHA Plan, HUD indicated that these terms should be defined at the local level as part of the public participation in the PHA Plan process. The PHA must state the basic criteria for the definitions in its Annual Plan. HUD has provided the following guidance for determining criteria:

- Changes to rent or admissions policies or organization of the waiting list;

- Additions of non-emergency work items (items not included in the current Annual Statement or Five-Year Action Plan) or change in the use of replacement reserve funds under the Capital Fund; and

- Any change with regard to demolition or disposition, designation, homeownership programs or conversion activities.

Any significant amendment or substantial deviation/modification to a PHA Plan is subject to the same requirements as the original PHA Plan (e.g., consultation with RAB; 45-day public review period; adoption by the PHA Board of Directors at a public meeting; and HUD review and approval).

2) Fungibility and Capital Items. As stated above, PHAs are required to submit a CFP Five-Year Action Plan listing all “large capital items”. Although PHAs are only required to list large capital items on their Five-Year Action Plan, PHAs will only be permitted to exercise fungibility (as defined in 24 CFR Part 968.305) among work items that are included in the Annual Plan and/or the Five-Year Action Plan. PHAs that wish to exercise fungibility should include as many work items in the Five-Year Action Plan as necessary, even if some of the items are not large capital items. If a PHA wishes to conduct a non-emergency capital work item that has not been included in a previously approve plan, if it is a significant amendment the PHA must first amend its plan to add the work item. The amended plan must be approved by HUD before the PHA may begin work.

All requests for funding for emergencies and natural disasters must be submitted within 90 days of the incident occurring, unless the Assistant Secretary grants an extension of the time frame based on extraordinary circumstances.

Requests must be fully documented. An independent third party must prepare all damage assessments and estimates. A copy of the insurance report must also be provided. HUD approves funding for these grants in the order that applications are determined approvable.

There is no requirement for resident or local/tribal governmental consultation or public hearing for funding from the reserve due to the PHA’s need to submit the request quickly. These work items would not normally be included in a PHA Annual Plan since they cannot be anticipated. However, the PHA is urged to consult, where possible, with residents and local/tribal government officials. The PHA is required to inform residents and local/tribal government officials of any approved disaster or emergency funding. See Chapter 4, Emergencies and Natural Disasters, for details.

E. HUD Review and Approval. Section 511 of QHWRA establishes HUD's responsibility for reviewing and approving or disapproving each PHA Plan as well as any significant amendments or modifications to a Plan. This responsibility has been entrusted to HUD's Field Office Public Housing Directors for all PHAs, including troubled PHAs. The review process must be completed within the required 75-day period as established by law. Highlights of the review and approval process follow.

1) Submission of the Plan. The official Date of Submission of a PHA Plan is the date when HUD receives the electronic PHA Plan Template with required certifications. The Field Office will establish the 75-day review period based on receipt of these documents.

2) Review Criteria. The Field Office is responsible for reviewing the PHA Plan including the Capital Fund component based on the following statutory standards:

a) Completeness. Does the PHA Plan contain all the information that is required? An "incomplete" Plan would include a Plan that does not contain the Capital Fund Annual Statement if the PHA is applying for these funds.

b) Consistency. Is the information provided as part of the PHA Plan consistent with the data on record at HUD?

c) Compliance. Is the information provided as part of the PHA Plan prohibited or inconsistent with QHWRA, the U.S. Housing Act of 1937, or any other applicable Federal law?

Field Office staff should inform PHAs promptly of any deficiencies and corrective actions required and determine if the correction can be completed within the 75-day review period.

The Field Office is responsible for reviewing the Capital Fund Program Annual Statement, Five-Year Action Plan, and Performance and Evaluation Reports during the 75-day review period.

Field Offices utilize a PHA Plan Compliance Review Checklist for each type of PHA Plan (e.g., standard, streamlined annual, and streamlined 5-year/annual plans).

3) Approval. A Plan will be automatically approved if HUD does not disapprove it within the 75-day time frame.

4) Disapproval. If the Field Office determines that a PHA Plan does not comply with any of the three statutory standards, the Field Office will disapprove the Plan.

If the Plan has technical deficiencies, the Field Office will specify a date for the re-submission of the Plan with the required corrections. Typical turnaround time is three weeks and should fall within the 75-day review period.

If the Plan has substantive deficiencies, the PHA must consult with the RAB and schedule a comment period and a public hearing. The Field Office will specify a reasonable time for resubmission of the Plan to allow for corrections and the consultation process within the 75-day review period. Omitting a Capital Fund Plan is an example of a "substantive deficiency".

HUD will not provide Capital Fund to a PHA that does not have an approved Five Year Plan. .

5) Troubled PHAs. Field Offices will conduct the review of PHA Plans of PHAs designated as "troubled" and those PHAs in transition from or to a "troubled" category. The review will be conducted in consultation with staff from the Troubled Agency Recovery Center (TARC) or its successor. PHA Plans for "troubled" PHAs will not be automatically approved if HUD does not release a document by the end of the 75-day review period. The Field Office may request additional documentation from the PHA, such as a Recovery Plan, to aid in making determinations during review of a PHA Plan from a "troubled" PHA.

6) MTW PHAs. PHAs with MTW Agreements that exempt some PHAs from the annual and Five-Year PHA Plan and instead require an MTW Annual Plan are not required to have a Capital Fund Five-Year Action Plan, but can obligate Capital Funds for any activity in its MTW Annual Plan. HUD's Office of Public Housing Investments has the lead responsibility for the review and approval of MTW Annual Plans. Field Offices have an advisory role in the review of these plans.

MTW PHAs that do not operate block grants are not exempt from the requirement to submit a PHA Plan and must include a separate section describing the activities and uses of funding the PHA is undertaking under the MTW program. These descriptions will be reviewed by the Field Office following the PHA Plan review process.

Detailed information on PHA Plan requirements can be found on HUD's website at: http://www.hud.gov/offices/pih/pha/plans/