


# U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## CAPITAL FUND GUIDEBOOK TRAINING

### DAY 2 MODULE 4

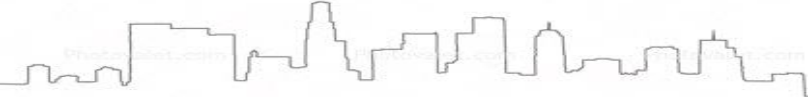
#### SECURITY INTERESTS AND FINANCING ACTIVITIES (CHAPTER 11)

#### COMPLIANCE, PENALTIES AND SANCTIONS (CHAPTER 12)





## CHAPTER 11: TOPICS


- Capital Fund Financing Program (CFFP)
- Operating Fund Financing Program (OFFP)
- Public Housing Mortgage Program (PHMP)
- Other Security Interests and Financing Activities



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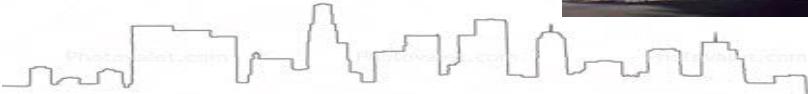



# CAPITAL FUND FINANCING PROGRAM (CFFP)




## CFFP OVERVIEW


- 192 Transactions.
- 247 PHAs participated.
- Approximately \$4.5 Billion in transactions approved.
- Transaction size from \$104 thousand to \$656 million.
- Pooled and Individual PHA Transactions.



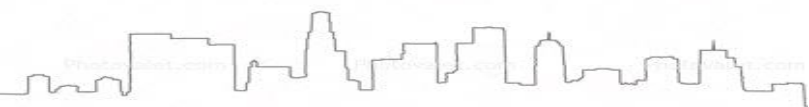
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## POTENTIAL BENEFITS OF CFFP




- Potential Realized with effective long term planning
- Address backlog modernization needs
- Economies of scale and scope
- Leverage additional funds (ie: tax credits)



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## CFFP FUNDAMENTALS

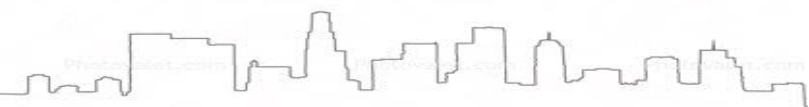


Pledge a portion of PHA's current and future years' capital fund allocation as collateral for borrowing.


**CFFP Proceeds Considered Capital Funds:**  
All Capital Fund program statutes, regulations, ACC, HUD notices apply to CFFP.

**PHA Plan:**


- Use of Proceeds – Annual Statement.
- Use of Capital Funds for Debt Service
- 5-Year Action Plan (Annual Statement if Applicable).



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## CFFP FUNDAMENTALS, CONTINUED



**Financial Structure/Business Terms:**

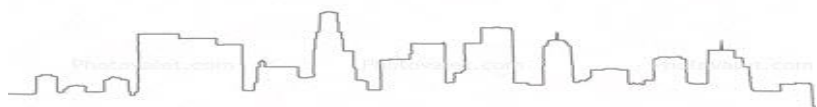
- Up to 20 years, generally.
- Up to 33% of annual appropriation.

**Risk to Lenders/Investors and PHAs:**


- Appropriations.
- Performance.
- Poor Planning/Implementation.

**RHF Pledge:**


Pledge 100% - provided overall Capital Funds do not exceed 50% of annual appropriation. (e.g., Capital Fund + RHF combined for new construction will not exceed 50 percent.)



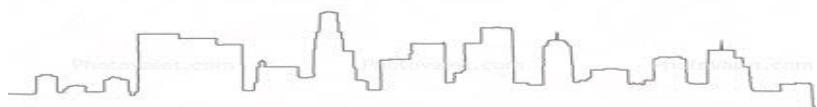
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## SUBMISSION REQUIREMENTS




| Requirements  |
|---|
| Cover letter  |
| Term sheet, table of contents, and contact                    |
| Financing Schedules and documents                             |
| Capital Fund Budget   |
| PNA, Management Assessment, Fairness Opinion                  |
| Declaration of Trust documentation                            |
| Board Resolution, Counsel's Opinion, and Depository Agreement |




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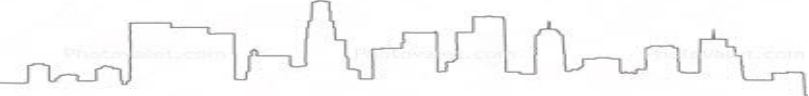


## STRATEGIC MANAGEMENT KEY POINTS




- When considering options:
  - How much money can I raise?
  - Reduction of public housing units = Reduction in Capital Funds and Operating Funds.
  
- A Strategic Plan is not an emergency tactic.
  
- The PNA is an excellent tool to anticipate future demands and be prepared for them.






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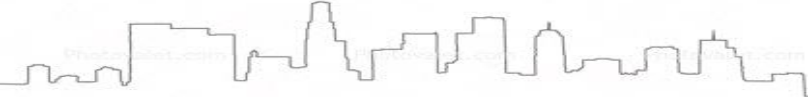


## CFFP TRANSACTION EXAMPLE

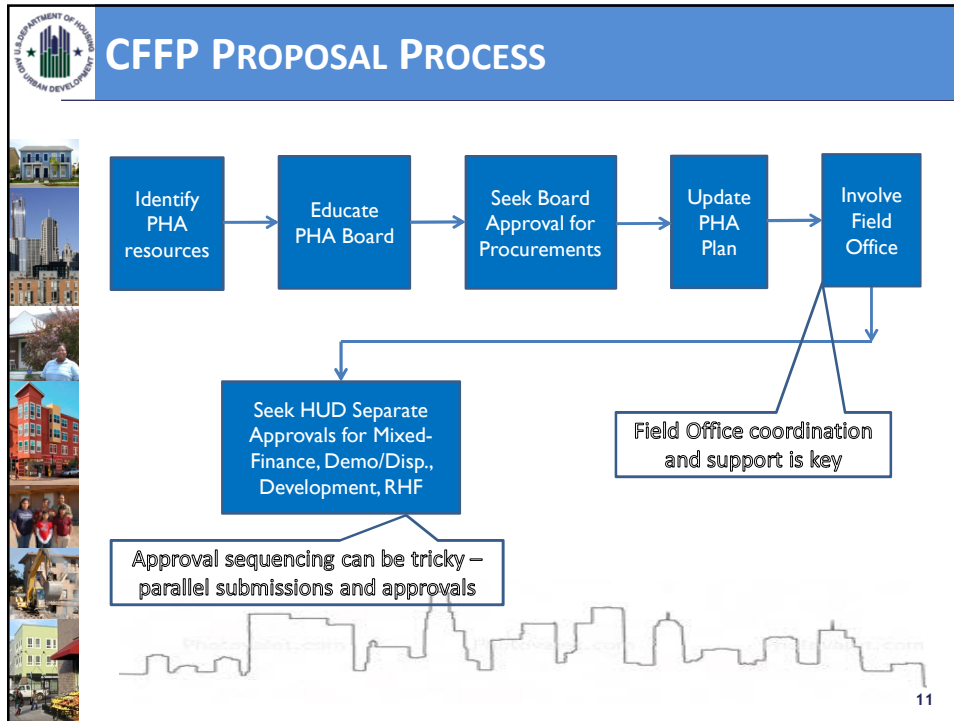


| Sources                         | Amount      |
|---------------------------------|-------------|
| Capital Funds                   | \$1,000,000 |
| Annual \$ Pledge (33%)          | \$329,985   |
| Remaining Capital Funds         | \$670,015   |
| Total Borrowing*                | \$4,000,000 |
| Debt Service Reserve            | \$329,985   |
| Capitalized Interest (3 months) | \$60,000    |
| Expenses                        | \$140,000   |
| Project Fund                    | \$3,800,000 |


\*Assumes 5.329% fixed rate for 20 years, \$140,000 in expenses.



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- TOP 4 THINGS THAT SLOW DOWN A CFPP PROPOSAL**
1. Physical Needs Assessment not complete, not submitted to the Field Office.
  2. PHA Plan not complete, not completed in accordance with HUD requirements, or not approved.
  3. Evidence of effective DOTs in first position, lacking or insufficient. Counsel unresponsive.
  4. Adjustments to CFP to reflect activities that would reduce grant.
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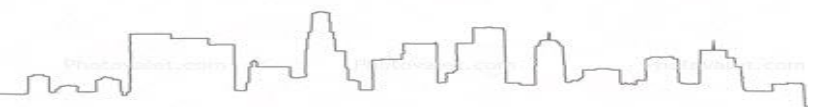
## RESOURCES

**Where does a PHA find information regarding the necessary documentation?**

**CFFP website:**  
<http://www.hud.gov/offices/pih/programs/ph/capfund/cffp.cfm>

**Office of Capital Improvements website (Cap Fund Reports):**  
<http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm>

**Local Field Office :**  
<http://www.hud.gov/offices/pih/programs/ph/capfund/cffprolefo.cfm#1>




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## OPERATING FUND FINANCING PROGRAM (OFFP)



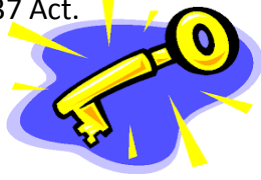
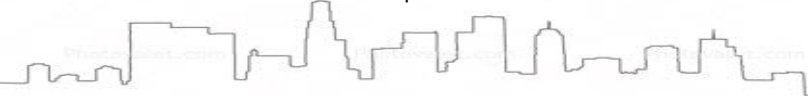


OFFP KEY ELEMENTS




- Authorized by Section 9(d)(1)(A) of the 1937 Act.
- HUD written approval required on a case-by-case basis.
- PHAs are permitted to borrow private capital to develop or modernize public housing.
- PHAs may use a portion of their Operating Fund Reserve balances to collateralize financing and pay debt service.


Pursuant to section 9(e)(1)(I) of the 1937 Act, OFFP must include rehabilitation or development

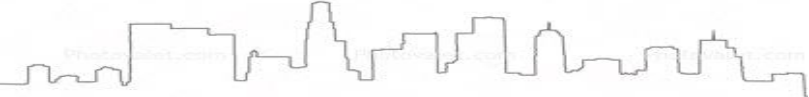
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OFFP SUBMISSION REQUIREMENTS




| Requirements  |
|---|
| Cover letter  |
| OFFP Financing Spreadsheet                                  |
| Financing Statements  |
| Financing Schedules   |
| Annual Statement Budget (use of proceeds)                   |
| Disclosure of Existing Financing                            |
| Transactional Documents                                     |
| Board Resolution, Counsel's Opinion, & Depository Agreement |
| Fairness Opinion, if requested                              |
| DOT/DORC documentation                                      |

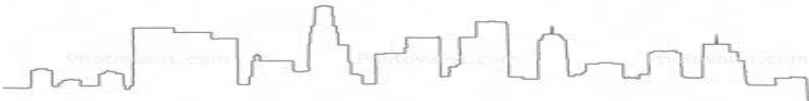




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 **OFFP EXAMPLE – HOUSING AUTHORITY OF THE CITY OF ABC, LA**


- Operating Fund reserves as collateral for a loan for redevelopment of Balou Homes, a mixed finance transaction, in the amount of \$1.3 million.
- Security between Jones Bank and Trust and ABC City.
- 36 newly constructed townhome public housing units.




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**PUBLIC HOUSING MORTGAGE PROGRAM  
(PHMP)/SECTION 30**

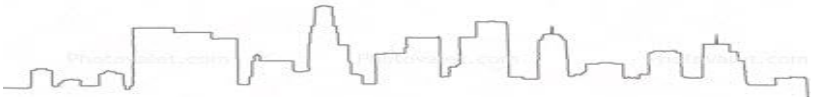


 **WHAT IS SECTION 30?**


➤ **Section 516 of QHWRA added Section 30 to the United States Housing Act of 1937**

- Allows for the placement of a security interest on public housing property with approval of the Secretary of HUD.
- Use judiciously to support the overall management of an agencies public housing stock.
- Best to leverage with other funding sources like tax credits to maximize the potential impact.





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 **WHAT IS A PHMP TRANSACTION?**

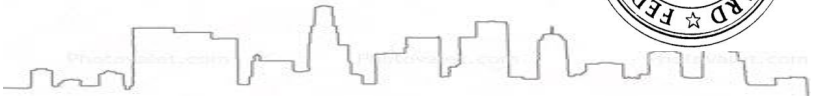
➤ **Mortgage/Rider on Public Housing Real Estate:**

- May be in first position on non-dwelling property.
- Must be subordinate to DOT on dwelling property.


➤ **The PHMP permits PHAs to utilize programs which may require a mortgage or restrictive use covenant filed on the property:**

- Federal Home Loan Bank AHP.
- Other State or local lending programs.



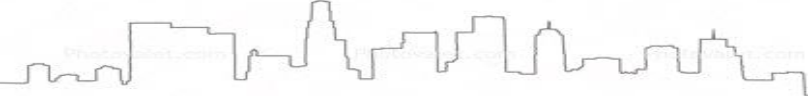


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## PHMP SUBMISSION REQUIREMENTS

| Requirements                 |
|------------------------------|
| Cover letter                 |
| Amount of Financing          |
| Financial Terms              |
| Security/Collateral          |
| Recourse Terms               |
| Income Restrictions          |
| Payment Terms                |
| Cost of Issuance             |
| Debt Service Requirements    |
| Any other special provisions |

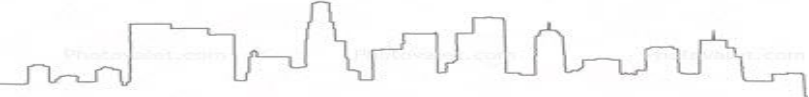


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## PHMP LESSONS LEARNED

- If you pledge public housing assets, get written approval from DAS of OPHI.
- Loan does not involve a pledge of public housing assets?
  - Are you sure?
  - Ask your attorney to insert a clear non-recourse provision in the loan documents – there is no recourse to public housing assets.
  - If you borrow funds, make sure you get an attorney’s opinion that PH assets are not pledged or otherwise encumbered.



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 **LEGAL PROVISIONS**

➤ **Conflicts Provision:**

- Public Housing requirements prevail.

➤ **Non-Recourse Provision:**

- Recourse to public housing assets limited only to property being mortgaged.

**These legal provisions must be incorporated in all legal documents.**




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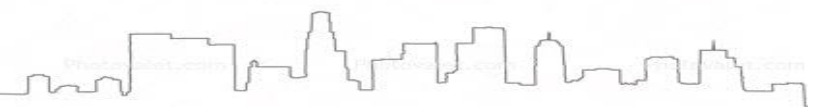


**OTHER SECURITY INTERESTS AND FINANCING ACTIVITIES**




 **ENERGY PERFORMANCE CONTRACTS SECTION 30**

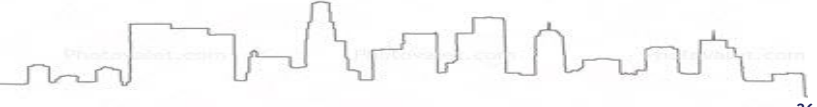
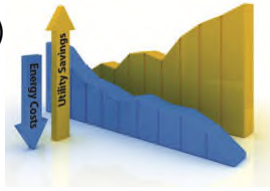
- An EPC requiring a security interest or other public housing property encumbrance must obtain EPC Section 30 approval.
- EPC Section 30 proposals are submitted to the Field Office and the Deputy Asst. Secretary of Field Operations.
- PHA will receive separate approval for the EPC transaction and the EPC Section 30.





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 **EPC SECTION 30 EXAMPLE – HOUSING AUTHORITY OF A CALIFORNIA COUNTY**

- Grants security interest related to an Energy Performance Contract (EPC):
  - County of ABC.
  - Acme Inc., the Energy Services Co. (ESCO)
  - Jones Capital Corporation (Lessor).
- Installation of Energy Conservation Measures (ECMs):
  - 15 years.
  - \$2.1 million.
  - ECMS at seven public housing developments (500 units)



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**U. S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**CAPITAL FUND GUIDEBOOK TRAINING**

**COMPLIANCE, PENALTIES AND SANCTIONS  
(CHAPTER 12)**

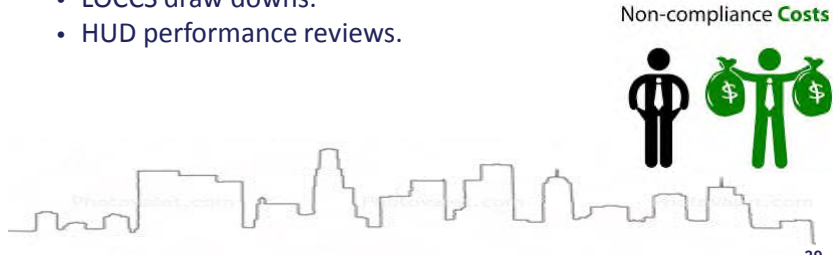


**COMPLIANCE REQUIREMENTS**


 **COMPLIANCE OVERVIEW**

- **PHA's Certification of compliance with PH Requirements and 24 CFR 905**
  - Execution of the CF ACC Amendment
  - Submissions required by this part
  - Disbursement of Capital Fund grants from HUD
- **Key points when HUD will evaluate compliance:**
  - Capital Fund Submission.
  - Development Submissions.
  - LOCCS draw downs.
  - HUD performance reviews.

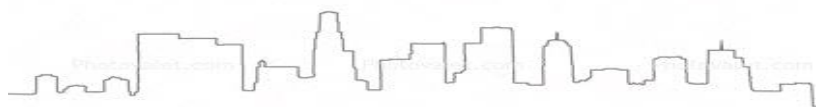
Non-compliance **Costs**




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 **SUBMISSION REQUIREMENTS**


- PHAs must correct information in Annual Capital Fund submissions not compliant with Part 905
  - Administrative sanctions may result
- PHAs must comply with the following:
  - 24 CFR 905-Capital Fund Rule
  - 2 CFR 200.
  - Civil Rights Acts.
  - Accessibility Requirements- Section 504, American Disabilities Act (ADA), Fair Housing Amendments Act (FHAA), Architectural Barriers Act (ABA).
  - Section 3.



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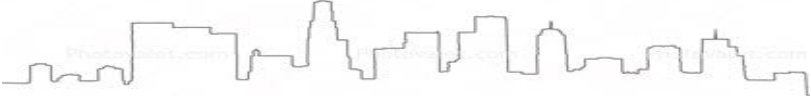


## POST-SUBMISSION REQUIREMENTS



➤ Access to **Capital Funds** may be **suspended/denied** if non-compliant in any of the following:

- Timely certification of IMS/PIC data;
- Current DUNS number in SAM – an annual update;
- Submission of Board resolution approving 5-Year Action Plan;
- Timely submission of required documents;
- Complete environmental reviews; or
- Compliance with procurement requirements.




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## SANCTIONS




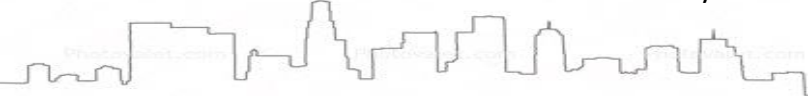


 **HUD SANCTIONS**

➤ HUD can take the following actions for non-compliance:

- Corrective action order
- Reimbursement from non-federal sources
- Limit, withhold, reduce, recapture, or terminate capital fund or operating fund assistance
- Limited denial of participation/ debar responsible PHA officials
- Withhold assistance or other legal action per Section 6(j)
- Declare a substantial default of the ACC
- Actions under 2 CFR 200.338-200.342
- Other corrective action that HUD deems necessary





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 **WRAP UP AND QUESTIONS**



