



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention to:

Public Housing Agencies; and
Public Housing Directors

Notice: PIH-2009-33 (HA)

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Cross References: PIH 2008-41(HA)

SUBJECT: Capital Fund Program Awards for FY 2009

Purpose: This Notice describes the Capital Fund Program awards for FY 2009 including the Capital Fund Program formula grant and, where applicable, the Replacement Housing Factor (RHF) grant(s) for your public housing agency (PHA). To assist PHAs, the following items have been posted to the HUD PIH website:

- a map identifying the Capital Fund Program grant award(s);
- processing guidance; and
- a timeline of key processing dates.

The HUD PIH website is located at:

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

PHAs are encouraged to thoroughly read the processing guidance on the website in order to ensure quick and efficient distribution of Capital Fund Program awards.

It is recommended that this website be bookmarked for future reference. The Department will also send each PHA an email (based on the addresses in the PIC system) with a link to the website when the Annual Contributions Contract (ACC) Amendments are available on the website.

Performance Reward. In FY 2009, the Department is providing PHAs that are High Performers with a performance reward of 5 percent along with the funds recaptured from PHAs that failed to comply with Section 9(j) of the United States Housing Act of 1937, as amended (the Act), and 24 CFR 905.120. The listing of PHAs that received High Performer ratings can be found on at the website <http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm>.

Signing the ACC Amendment. PHAs are required to retrieve the ACC Amendment(s) from the website identified above and print an ACC Amendment for each of their grants (e.g., formula, first increment RHF, second increment RHF). The executive director or the designee must sign and date three originals of each ACC Amendment. By signing the ACC Amendment the PHA is agreeing to comply with the Capital Fund Program statute (i.e., Section 9 of the Act and the regulations including 24 CFR Parts 905, 968, 941).

Withholding and Sanctions for Failure to obligate in Accordance with the Act and the Regulation. Section 9(j) of the Act and 24 CFR 905.120 require that a PHA obligate 90 percent of a Capital Fund grant within 2 years of the date the funds are made available and expend 100 percent of the grant within 4 years of the date the funds are made available. For PHAs that fail to comply with the obligation requirements, section 9(j) of the Act and 24 CFR section 905.120 requires that HUD withhold the PHA's next Capital Fund grant(s) until the PHA obligates 90 percent of its past due grant. If the PHA cures its failure to comply with the obligation requirement during the year, HUD will release the withheld portion of the Capital Fund grant(s), less any penalty. The penalty for noncompliance will be to reduce the new Capital Fund grant(s) by 1/12 for every month the PHA was in noncompliance. Additionally, any grant that was not in compliance in FY 2008 or prior that became known to HUD after the FY 2008 funds were distributed will be subject to sanctions and penalties in FY 2009.

Failure to Expend Within the Timeframe Will Result in Recapture. If a PHA fails to expend 100 percent of any Capital Fund grant in accordance with the Act by the expenditure deadline, the remaining unexpended funds will be recaptured.

ACC Amendments and the Capital Fund Annual Statement. All PHAs, qualified and non qualified, must submit three original signed and dated ACC Amendments for each Capital Fund grant(s), along with the Capital Fund Annual Statement (form HUD-50075.1 OMB no. 2577-0226 expires 4/30/2011) Part I, Summary and Part II, Supporting Pages, to the local HUD Field Office. The eligible activities on the Annual Statement have changed; therefore, it is imperative that PHA's use this new Capital Fund form.

“A qualified public housing agency is a public housing agency meeting the following requirements: (1) the sum of public housing dwelling units administered by the public housing agency and the number of vouchers under Section 8(o) of the Act is 550 or fewer, and (2) the public housing agency is not designated as a troubled PHA under section 6(j)(2) and does not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months (as added by Housing and Economic Recovery Act (HERA) of 2008).”

For non-qualified public housing agencies that submitted the form HUD-50075.1 Part I and Part II with the Annual Plan earlier this year, this submission will be a revised budget based on the actual funding amount which was posted to the web.

Required Submissions for Qualified Public Housing Agencies. In order to have access to their FY 2009 Capital Fund grant, qualified public housing agencies are required to submit an Annual Statement Parts I & II to HUD. The information in the Annual Statement is

required for the HUD Field Office staff to enter the PHA's budget into the Line of Credit Control System (LOCCS) and to monitor compliance with HUD's requirements under Section 9.

Qualified public housing agencies must submit to the local HUD Field Office the following:

- ✓ Annual Statement Parts I & II;
- ✓ Capital Fund Five Year Action Plan;
- ✓ Amendments to the Capital Fund Five Year Action Plan, if any; and
- ✓ Performance and Evaluation Report on open grants, only for qualified public housing agencies not in compliance with 9(j).

Annual Statement for Qualified Public Housing Agencies No Longer Requires HUD Approval. The Annual Statement Parts I & II for qualified public housing agencies shall be approved by the PHA's Board of Commissioners and signed and dated by the Executive Director before submission to HUD. HUD approval of the Annual Statement for qualified public housing agencies is no longer required. However, the HUD Field Office is required to verify that the information and/or forms submitted by the PHA are complete and that the submission is on the correct OMB approved form. In addition, the Field Office will review the Annual Statement to determine whether the PHA is in compliance with appropriate regulatory and statutory limitations for the Capital Fund Program or other federal requirements such as the environmental review (Part 50 or Part 58), Section 504 disability requirements, wage rates and relocation. Qualified public housing agencies are required to revise and/or correct any information that is not in compliance, and HUD has the authority to impose administrative sanctions until the appropriate revisions are made.

Qualified Public Housing Agencies Performance and Evaluation Report Requirements. Beginning in FY 2009, qualified public housing agencies that are in compliance with section 9(j) of the Act are required to prepare a Performance and Evaluation Report for all open grants and keep it on file at the PHA. Qualified public housing agencies that are not in compliance with section 9(j) of the Act are required to prepare and submit the Performance and Evaluation Report for all open grants at the time the ACC Amendment is submitted to the Field Office.

Non-Qualified Public Housing Agencies Performance and Evaluation Report Requirements. All non-qualified public housing agencies are annually required to prepare and submit a Performance and Evaluation Report (form 50075.1) for all open grants with the Annual Plan. (An open grant is a grant for which a final Actual Modernization Cost Certificate (AMCC) has not been submitted, and the Field Office has not entered a preaudit date in LOCCS).

Proposed Work Items and the Five Year Action Plan. All work items contained in the Annual Statement must be included in the HUD-approved Capital Fund Five-Year Action Plan. Qualified public housing agencies that are proposing to undertake new work items that are not in an approved Capital Fund Five-Year Action Plan are required to revise/amend their

Five-Year Action Plan. Section 9(d)(1) of the Act establishes the Department's authority to collect information necessary to implement and monitor the Capital Fund Program.

ACC Amendment Due Date. The ACC Amendments and the Annual Statement(s), must be received in the HUD Field Office by the date identified in the FY 2009 Capital Time Line which is posted to the web. Any ACC Amendment(s) that are received in the Field Office after the due date will have the same obligation start date. Consequently, PHAs that submit their ACC Amendment(s) after the specified time will have less than 24 months to obligate 90 percent of the Capital Fund grant and less than 48 months to expend these funds.

PHAs Rejecting a Capital Fund Grant. If a PHA elects to reject any Capital Fund grant(s), the executive director must send a written statement to the local HUD Field Office which identifies the grant number and dollar amount of the grant(s) to be rejected. If a PHA does not send a written statement to the local HUD Field Office, the grant will be held in reservation until the FY 2010 Capital Fund Grant Awards after which the grant will no longer be available to the PHA.

Environmental Review Requirements. All PHAs must meet the environmental review requirements of 24 CFR Part 50 or 24 CFR Part 58. Until the PHA has met the environmental review requirements, the Capital Fund formula grant will remain in the LOCCS initial budget. PHAs are permitted to obligate and expend for activities and work items that are either categorically excluded and not subject to compliance requirements under related environmental laws and authorities under 24 CFR 50.19(b) or exempt/categorically excluded from the environmental review requirements under 24 CFR 58.34(a) and 24 CFR 58.35(b). (For further guidance see Part 50 and Part 58.).

The following are examples of activities that do not require environmental review because: (1) under Part 50, they are categorically excluded from environmental assessment under the National Environmental Policy Act (NEPA) and not subject to compliance with related environmental laws (§50.19(b)); and (2) under Part 58, they are either categorically excluded from NEPA assessment and not subject to compliance with related laws (§58.35(b)) or exempt from environmental review (§58.34):

- Environmental studies;
- Inspections and testing of properties for hazards and defects;
- Administrative and management activities;
- Purchase of insurance and tools;
- Engineering and design costs;
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.
- Operating costs including maintenance, security, and purchase of equipment (e.g., vehicles, office furniture, and play equipment).
- Activities to assist homebuyers to purchase existing dwelling units or units already under construction; and

- Affordable housing predevelopment costs that do not have a physical impact.
- Under Part 58, a responsible entity may determine that an activity that is categorically excluded from NEPA assessment under 24 CFR 58.35(a) is exempt from all environmental review if there are no circumstances that require compliance with the related environmental laws and authorities.

LOCCS Initial Budget Changes for FY 2009. The LOCCS initial budget will be as follows:

LOCCS Initial Budget			
BLI 0100-Reserved Budget	70% of the grant authorized amount	undisbursable	Contact Field Office
BLI 1408-Management Improvement	20% of the grant authorized amount	disbursable	Auto review if greater than 20%
BLI 1410-Administration	10% of grant authorized amount	disbursable	Auto review if greater than 10%

HUD Field Offices Spread Capital Fund Budgets with an Approved Environmental Review. In order to ensure that PHAs have funds available as quickly as possible, HUD Field Offices will spread the Capital Fund budgets for the FY 2009 formula grants within 10 calendar days of the effective date of the Capital Fund grants. The Field Offices will be notified by email when to begin spreading the budgets in LOCCS.

Some funding requests are subject to the completion of Environmental Review Requirements described above prior to the PHA’s commitment (i.e., obligation) of funds and expenditures of funds. The Field Office will be able to immediately spread the budget for: (1) qualified PHAs with an Annual Statement and an approved Environmental Review and (2) non-qualified PHAs with an approved Annual Plan and an approved Environmental Review. Once the Field Office has spread the budgets for these grants in LOCCS, the PHAs can proceed to voucher expenditures.

If the PHA has an approved Annual Plan or an Annual Statement but the Environmental Review is unapproved; the grant must remain in the LOCCS Initial Budget until the Environmental Review is approved.

PHAs without an Annual Statement or Approved Annual Plan or an approved Environmental Review. A qualified PHA without an Annual Statement or a non-qualified PHA without an approved Annual Plan will only be able to request funds from BLI 1408, Management Improvements and BLI 1410, Administration.

Some funding requests are subject to the completion of Environmental Review Requirements described above prior to the PHA’s commitment (i.e., obligation) of funds or expenditures of funds. If the PHA wants to expend from any other budget line item, the PHA must meet all necessary Environmental Review Requirements prior to submission of documentation to support the requested expenditure to the HUD Field Office for review. The Field Office will ensure that all the necessary Environmental Review Requirements have been met prior to reviewing the PHA’s documentation. Once the Environmental Review

Requirements have been met, the Field Office will review the submitted documentation to support the expenditure and approve or reject the request based on the documentation. If the requested documentation is approved, then the Field Office will update the appropriate budget line item authorizations for the amount of the requested expenditure. The Field Office must notify the PHA of the approval or rejection of the request. If the request is approved, the Field Office updates the authorization and the PHA can voucher for the expense supported by the documentation.

Fungibility among the Capital Fund Formula and Prior Year Capital Fund Formula Grants. As defined in paragraph 1-6, of the Comprehensive Grant Program Guidebook 7485.3 G and 24 CFR 968.305, “Fungibility is a concept which permits the [P]HA to substitute any work from the latest approved Five-Year Action Plan to any previously approved Comprehensive Improvement Assistance Program (CIAP) Budget or Comprehensive Grant Program (CGP) Annual Statement and to move work items among approved modernization budgets without prior HUD approval.” (N.B., the Quality Housing and Work Responsibility Act of 1999 terminated the former CIAP, CGP and public housing development programs and replaced them with the new Capital Fund Program). A PHA can move obligations among open Capital Fund formula grants as long as all of the following conditions are met:

- (1) The work item to be moved must be listed in the PHA’s HUD approved Five Year Action Plan;
- (2) The work item must be in a budget line item that appears in both year’s HUD budgets (e.g., a work item in BLI 1460 can only be moved to BLI 1460 of the other year’s grant);
- (3) For cases in which fungibility involves a new work item, any request for an amendment of the Five Year Action Plan to include the work item must be submitted to the Field Office prior to the obligation deadline;
- (4) The obligation of the work item to be moved must occur during the obligation time frame of the grant to which the work item is to be moved; and
- (5) Any other questions regarding fungibility should be directed to Headquarters to determine eligibility.

There is No Fungibility between Capital Fund Formula and Capital Fund Recovery Grants. A PHA cannot move an obligation or expenditure from a Capital Fund Formula grant to a Capital Fund Recovery grant (formula or competitive) in order to expedite obligation and expenditure. There is no fungibility between the Capital Fund Recovery grants and Capital Fund Formula grants. Further, there is no fungibility between Capital Fund Recovery grants, formula and competitive, because the two types of grants have specific statutory funding limits and were therefore, assigned unique funding codes in Program Accounting System (PAS).

An Example of Fungibility to Meet 90 percent Obligation Deadline: Consider the following example: A PHA wants to move an obligation from FY 2008 Capital fund grant to a FY 2007 Capital Fund Grant that is having trouble obligating 90 percent of its funds by the obligation deadline because of extensive delays in receiving the demolition approval and securing the contract. The FY 2007 grant has an obligation start of 5/20/07, an obligation end date of 5/19/09 and the expenditure end date of 5/19/11. The obligation start date of the

FY 2008 grant is 5/11/08 and the contract for the work item proposed for fungibility was signed on 5/25/09. Both the FY 2007 and FY 2008 grants have budgeted funds to BLI 1460, dwelling units and the work item falls under BLI 1460. While the work item proposed for fungibility is included in the Five Year Action Plan and is an eligible Capital Fund activity, the contract that would obligate these funds was not signed until 5/25/09 which is after the obligation end date of the FY 2007 grant but the work item is enough to meet the amount needed for the 90 percent obligation deadline. In this example: (1) the work item is fungible to the 2007 grant and it can be reported on the PHA's next LOCCS report on 6/19/09 which would cure the noncompliance under the FY 2007 grant and the PHA would incur a 1/12 penalty (i.e., the PHA was 1 month late in meeting the 90 percent obligation deadline even with fungibility) and; (2) the work item cannot be added to the obligation report for the period ending in 5/19/09, the obligation deadline. The Department will send each PHA an email (based on the addresses in PIC system) when additional examples are posted to the website.

FY 2009 Replacement Housing Factor Grants. This section describes first and second increment RHF grants. Since RHF grants are a type of Capital Fund Program grant they are subject to the Environmental Review Requirements described in the section entitled "Environmental Review Requirements".

First Increment RHF Grants. First increment grants are automatically awarded to all eligible PHAs. PHAs receiving first increment RHF grants in FY 2008 will have the ACC Amendments for those RHF grants along with the ACC Amendments for the FY 2009 formula grants available on the HUD PIH Website.

- Not Accumulating RHF Grants. If the PHA is not planning to accumulate its RHF funding prior to obligating it for a development activity (e.g., new development or acquisition), the PHA is not required to submit an RHF Plan for HUD approval. The obligation and expenditure deadlines for RHF grants that are not being accumulated are set to a standard 2 year obligation, 4 year expenditure timeframe in the same way the deadlines are set for the PHA's formula grants.

Accumulating RHF Grants. If a PHA elects to accumulate up to five years of RHF grants, it must submit a RHF Plan to the local HUD Field Office for approval. In this instance the obligation start date for all the RHF grants being accumulated will be established based on the number of years of accumulation and will likely be delayed, that is the obligation start date will not be the same as the obligation start date for formula grants awarded in the same fiscal year. Guidelines for preparing an RHF Plan can be found at the website which is located at:

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

Second Increment RHF Grants. Both PHAs eligible for a first tier of second increment RHF in FY 2009 for the first time and PHAs currently receiving second increment RHF grants that are eligible to receive a new tier of second increment in FY 2009 will have their ACC Amendments available on the HUD PIH website, along with the FY 2009 formula grants. PHAs eligible for second increment RHF for the first time in FY 2009,

must submit an RHF Plan to the local HUD Field Office for approval by October 31, 2009 in order to have access to the second increment RHF grant(s) for the eligible units. If a PHA fails to submit a Second Increment RHF Plan to the local Field Office by October 31, 2009, the grant will be suspended.

PHAs eligible for a new tier of second increment funding that are already receiving second increment RHF funding have the option of updating their existing second increment RHF Plan to address the new funding, or submitting a new Second Increment RHF Plan. If the existing Second Increment RHF Plan anticipated the additional funds, a revision is not required. If a PHA fails to submit a Second Increment RHF Plan to the local Field Office by October 31, 2009, the grant will be suspended.

If you have any questions or you need additional information, please contact the Field Office staff in your jurisdiction. At the Headquarters level, email your questions to the Office of Capital Improvements mailbox at PIHOCI @ HUD.gov.

/s/

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