

CAPITAL FUND PROCESSING GUIDANCE FOR FFY 2018 GRANT AWARDS

This notice provides Public Housing Authorities (PHAs) with guidance on the Capital Fund Program (CFP) award process for Federal Fiscal Year (FFY) 2018. These funds are being awarded under United States Housing Act of 1937 Housing Act, as amended, (“the Act”), and the Consolidated Appropriations Act of 2018. A new Capital Fund Final Rule (“new Rule”) became effective on November 25, 2013; the Capital Fund Regulations are available at 24 CFR 905. In part, this regulation decouples Capital Fund program submissions from the PHA Plan submission.

The U.S. Department of Housing and Urban Development (HUD, “the Department”) will send each PHA receiving Capital Funds an email (based on the addresses in the PIC system) notifying the PHA of the award of a Capital Grant. PHAs are responsible for maintaining the correct contact information, including the correct email address for the Executive Director or other responsible official authorized by the PHA Board to take actions within the Department’s Public Housing Program (e.g., CEO, Acting or Interim Executive Director), in PIC. PHAs are also responsible for various approvals (24 CFR 905.104) and compliance (24 CFR 905.106) with Capital Fund and Public Housing requirements (24 CFR 905.108) including maintaining an authorized official of the PHA for taking any actions (e.g., drawing of funds and binding the PHA to Public Housing requirements) via the Department’s Electronic Line of Credit Control System (eLOCCs).

Please note that there will be a delay of one or two weeks between the time that HUD announces the award of Capital Fund grants and their availability in the Department’s Electronic Line of Credit Control System (eLOCCs) while the Department implements new processes in the eLOCCS system as outlined below.

New Public Housing Annual Contributions Contract (ACC) (HUD-53012):

The public housing ACC was amended to merge the current HUD-53012-A and HUD-53012-B forms into one document (HUD-53012)(

<https://www.hud.gov/sites/dfiles/OCHCO/documents/53012.pdf>), adding requirements applicable to mixed-finance public housing development, making minor clarifications and updates to the grant agreement, based on applicable statutes and regulations (hereinafter “New ACC”). The New ACC and the Capital Fund ACC Amendment (to the New ACC) are implemented through the Department’s eLOCCs. No additional HUD or PHA signature is needed on the New ACC or Capital Fund ACC Amendment. The new process is outlined below:

1. The Department will publish a master ACC Amendment .pdf document at the following location:
https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund/2018pi/acc. The document will contain both the terms and conditions applicable to FFY 2018 Capital Fund formula grants and an appendix listing the following with respect to all Capital Fund formula grants the Department is issuing in FFY: PHA name, PHA code, Capital Fund grant number, grant amount and ACC Amendment effective date/obligation start date.
2. In the Department’s eLOCCS, the Department will include language on the payment

voucher page that will indicate that the PHA confirms that drawing down funds will act as a type of electronic signature for an FFY 2018 Capital Fund grant and will subject the PHA to the requirements of both the New ACC and the FFY 2018 Capital Fund ACC Amendment published at the location identified above
(https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund/2018pi/acc).

NOTE: When a PHA draws down funds from an FFY 2018 Capital Fund formula grant, it will become bound to the requirements of the New ACC and the FFY 2018 Capital Fund ACC Amendment. HUD's FFY 2018 Capital Fund ACC Amendment to the New ACC together with the New ACC constitute the annual grant agreement for the PHA's public housing program.

EPIC: In FFY 2018, all PHAs will be required to submit their CFP 5-Year Action Plans and Budgets within HUD's Energy and Performance Information Center (EPIC) system; the electronic CFP submission process will replace the current paper submission process. Field Offices (FOs) will review and approve or withhold approval, as appropriate, of 5-Year Action Plans in EPIC. PHAs with an approved 5-Year Action Plan in EPIC may revise work activity amounts to reflect actual awards and may "funge", or reschedule, approved activities from one year to another without seeking additional HUD FO approvals.

NOTE: Any use of funge or reschedule must be within the statutory and regulatory requirements for obligations and expenditures.

There is a new Budget Line Item (BLI) structure across EPIC and HUD's eLOCCS system. HUD is consolidating the BLIs that PHAs use most frequently into one broad-scope BLI, ***BLI 1480-General Capital Activity***. HUD expects this change to cut down significantly on the need for budget revisions and to better align with PHA business practices. The BLIs that remain distinct are generally those that are used less frequently or are rarely changed, or those with statutory or regulatory restrictions, such as BLI 1406-Operations and BLI 1410-Administration.

PHAs will be able to update budget amounts in EPIC and then eLOCCS will be updated to reflect the changes, without Field Offices having to enter these budget revisions into eLOCCS. However, budget revisions must continue to comply with requirements that have been enforced in the past through "hard edit checks" in eLOCCS, including restrictions on changes to the debt obligation BLIs and limits on the funds allocated to BLI 1410-Administration and BLI 1408-Management Improvements; budget revisions that fail to comply will not be applied in eLOCCS.

PRE-SUBMISSION DETAILS

- 1. Board Resolution Required on File.** PHAs are required to have on file a copy of a Board Resolution approving the PHA's CFP 5-Year Action Plan (including for 5-Year Action Plans submitted in the EPIC system). If a PHA has not held a board meeting on the 5-Year Action Plan that includes FFY 2018 at the time the Capital Fund grants are

awarded, it may use the public hearing and Board Resolution from its most recent approved 5-Year Action Plan; however, the PHA is not permitted to use Capital Funds for new work items that were not included in the previous 5-Year Action Plan, until the 5-Year Action Plan that is to be in effect for FFY 2018FY 2018 Capital Fund grants is approved by the board.

NOTE: Even though PHAs are permitted to use a Board Resolution from a previous 5-Year Action Plan, all PHAs must submit a 5-Year Action Plan that covers FFY 2018.

- 2. PHAs Rejecting a Capital Fund Grant.** If a PHA elects to reject any CFP grant(s), the executive director or designated official (e.g., CEO, Acting or Interim Executive Director) must send a written statement to the local HUD FO which identifies the grant number and dollar amount of the grant(s) to be rejected.

PHAs are required to have on file a resolution from the Board rejecting the CFP grant(s) for the Federal Fiscal year.

- 3. Management Improvements Cost Limits and Eligible Items.** According to 24 CFR 905.315(i), the FFY 2018 limit for funds budgeted to BLI 1408 Management Improvements will be reduced from 12% to 10%. Please review the eligible Management Improvements in 24 CFR 905.200(b)(7) to ensure that your PHA's planned activities are eligible for this BLI.
- 4. Updated Data Universal Number System (DUNS) Number.** DUNS registration in the System for Awards Management (SAM) is a requirement to receive Federal awards, and the registration must be active. The Field Office is responsible for monitoring the status of PHA DUNS numbers and must suspend the FFY 2018 Capital Fund grants of those PHAs with expired DUNS numbers. The FFY 2018 Capital Fund grants will be awarded and then the Field Office will suspend the grant until the registration is updated. Once the DUNS registration is updated, the Field Office will release the suspension.

NOTE: The obligation end date of the FFY 2018 grant will remain the same, so PHAs with expired DUNS numbers will have less than 2 years to obligate the funds.

PHA SUBMISSION REQUIREMENTS

5-Year Action Plan Entered into EPIC: To be authorized to spend FFY 2018 Capital Fund grants, PHAs must have a 5-Year Action Plan that includes FFY 2018 entered into EPIC. As PHAs transition to entering 5-Year Action Plans in EPIC, the 5-Year Action Plan Starting Year will vary depending upon the type of plan and period covered under the prior, paper-based plan.

Rolling 5-Year Action Plans: PHAs enter information into EPIC for a five-year period beginning with a starting year one year later than the starting year under the prior plan.

- For example, consider a PHA with a September 30th FYE and that is currently operating under a Rolling plan covering 2017 through 2022. The PHA would create a new 5-Year Action Plan in EPIC with a Starting Year of 2018, providing information on work activities for 2018 through 2022.

Fixed 5-Year Action Plans with at least 2 years remaining: PHAs may retain the plan Starting Year and enter work activities only for the remaining years of the plan.

- For example, consider a PHA with September 30th FYE that is currently operating under a Fixed 5-Year Action Plan for 2015 through 2019. For this PHA's 2018 submission in EPIC, two years will remain on the current plan (i.e., 2018 and 2019). Therefore, this PHA would create a 5-Year Action Plan in EPIC with a Starting Year of 2015 and enter work activities for 2018 and 2019.

Fixed 5-Year Action Plans with less than 2 Years remaining: PHAs with less than two years remaining on the Fixed 5-Year Action Plan in place immediately prior to their initial 5-Year Action Plan submission in EPIC must cover a new 5-year period in the plan submitted in EPIC and enter work activities for all 5 years.

- For example, consider a PHA with a September 30th FYE that is currently operating under a Fixed 5-Year Action Plan for 2014 through 2018. For this PHA's 2018 submission in EPIC, only one year will remain on the current plan. Therefore, this PHA would create a 5-Year Action Plan in EPIC with a Starting Year of 2018 and enter work activities for 2018 through 2022.

HUD Field Offices will review and approve 5-Year Action Plans in EPIC following their normal review protocol, with several additional key factors considered. In addition to the review practices currently in place, Field Offices will review the appropriateness of estimated grant amounts under the guidance provided in [PIH Notice 2016-21](#) and verify compliance with requirements that Work Activities pertain to a single development (if applicable), projected funding year, and BLI. Once the Field Office Director has approved a 5-Year Action Plan in EPIC, the plan will become unlocked. The PHA may then continue to modify the plan to reflect changing circumstances and decisions; while many modifications, such as adjusting estimated amounts, do not require additional Field Office approval, other changes, such as the addition of new work activities, will require FO review and approval in EPIC.

See PIH Notice 2016-21 for more information on EPIC. The notice is available at:
<https://www.hud.gov/sites/documents/PIH-2016-21.PDF>

NOTE: PHAs receiving Capital Fund grants are also required to submit various certifications to HUD; EPIC's Activity Planning Module does not automate these certifications, and PHAs must continue to submit these certifications.

Written Statement Defining Significant Amendment/Modification: Each PHA must submit a written statement defining the criteria the PHA will use for determining a significant amendment or modification to the CFP 5-Year Action Plan. In addition to the criteria established by the PHA, a proposed demolition, disposition, homeownership, RAD conversion, Capital Fund Financing, development, or mixed finance proposal is considered by HUD to be a

significant amendment to the CFP 5-Year Action Plan based on the Capital Fund Final Rule. This must be submitted as a separate written statement.

Public Hearing Requirement: PHAs are encouraged to combine the Capital Fund submission hearing with the PHA Plan hearing. If a PHA has not yet submitted its PHA Plan for FFY 2018 and has not held a public hearing, it may use its most recent public hearing from the PHA Plan or Capital Fund 5-Year Action Plan. However, the PHA must conduct a public hearing to cover the new work items proposed for the FFY 2018 grant(s) (typically incorporated in the PHA Plan process) before it can use Capital Funds for those work items. The PHA can continue to perform work items in the previous year's approved 5-Year Action Plan.

Civil Rights Certification: If the PHA has submitted a copy of the HUD-50077 or HUD-50077-CR with its PHA Plan for FFY 2018, a copy of the document can be submitted.

ADDITIONAL INFORMATION REGARDING FFY2018 CAPITAL FUND GRANTS

Reimbursement of CFP-Eligible Activities Funded with Other Sources: PHAs are not permitted to use any amount of a CFP grant to reimburse itself for eligible Capital Fund activities that were funded from another source. All Capital Fund obligations and expenditures (disbursements) must be recorded to the grant. The three main elements for legal availability of funds are purpose, time and amount. One of the reasons to prohibit paying from a non-CFP account and then reimbursing the CFP (if in fact it was CFP-eligible work) is that this could involve Anti-Deficiency Act transactions (paying for something when grant funds were unavailable). If there is a deficiency and no legal authority to pay with Capital Funds, reimbursing at a later time, does not cure the Anti-Deficiency Act violation, and it could also be an illegal augmentation of appropriations. Additionally, a reimbursing procedure could be the result of a merging of grant accounts (e.g., Operating Fund and Capital Fund) and lead to ineligible uses. The only exception to reimbursement would be if an annual Capital Fund appropriation were to allow cost reimbursement/indemnity or revolving fund (it never has).

Notification of Closeout or Future Public Housing Development (HUD-5837): This form provides notification to HUD of a PHA's intention to either closeout its public housing program or develop new public housing units. Closeout of the public housing program may follow removal of units from inventory through any available law or HUD program, which may include Sections 18, 22, 32, or 33 of the U.S. Housing Act of 1937 or the Rental Assistance Demonstration (RAD) program.

Physical Needs Assessment: In accordance with the Division L, Title II, Section 226 of the Consolidated Appropriations Act, 2018 HUD cannot utilize 2018 HUD Appropriations to require or enforce longstanding PNA regulations. Due to industry best practices and fiscal efficiencies, HUD is still encouraging PHAs to complete a PNA every 5 years as part of their strategic planning process.

Flexibility for Capital Fund Amounts: For FFY 2015, FFY 2016, FFY 2017, and FFY 2018 CFP awards, the limitation on Capital Funds used for Operating Fund-eligible activities described in section 9(g)(1) of the Act is increased from 20% to 25%, as identified in paragraph

2 of the 2018 CFP ACC Amendment. Small PHAs (those owning/operating less than 250 units) may continue to use the full flexibility provided for in section 9(g)(2) of the Act.

NOTE the following:

- A PHA with 250 or more public housing units may use no more than 25% of its FFY 2018 Capital Fund grant for activities that are eligible under the Operating Fund at 24 CFR Part 990.
- A PHA with less than 250 public housing units, that is not designated as troubled under PHAS, may use up to 100% of its annual Capital Fund grant for activities that are eligible under the Operating Fund at 24 CFR Part 990, except that the PHA must have determined that there are no debt service payments, significant Capital Fund needs, or emergency needs that must be met prior to transferring 100% of its Capital Funds to Operating Fund purposes. [See 24 CFR 905.314(l)]
- A PHA may use Capital Funds for Operating Fund-eligible activities only if such use is included in the 5-Year Action Plan that is approved by the PHA Board and HUD.

If a PHA's 5-Year Action Plan does not permit the use of Capital Funds for Operating Fund purposes or the 5-Year Action Plan limits such transfers to a lesser amount than allowed and desired by the PHA for transfer, a PHA may amend or modify its 5-Year Action Plan after its submission to HUD and HUD's approval. This may require additional Field Office review and approval. The PHA would need to determine if such amendment or modification to its Plan is a significant amendment based on the criteria established by the PHA in accordance with 24 CFR 905.300(b)(1)(iii). If such amendment is a significant amendment, the PHA must ensure that it complies with 24 CFR 905.300(b)(1)(v)(A)—i.e., the PHA's Board adopted the amendment at a public meeting and the amendment is approved by HUD.

- Capital Funds identified in the 5-Year Action Plan to be transferred to operations are obligated once the funds have been budgeted and **drawn down** by the PHA.
- Once a PHA transfers Capital Funds to operations, the PHA must follow the requirements of 24 CFR part 990 with respect to those funds.

Waiver for Anticrime and Antidrug Activities for Large PHAs (those owning/operating 250 or more public housing units): As noted above, for FFY 2018 the limitation in section 9(g)(1) of the Act is increased from 20% to 25%, as it was in FFY 2015, FFY 2016, and FFY 2017. For FFY 2018, the Secretary may waive this limitation to allow PHAs to fund activities authorized under section 9(e)(1)(C) of the Act.

Section 9(e)(1)(C) provides that PHAs may use Operating Funds for anticrime and antidrug activities, including the costs of providing adequate security for public housing residents, including above-baseline police service agreements.

Large PHAs seeking to transfer more than 25% of FFY 2018 Capital Funds to Operating Funds for anticrime and antidrug activities **ONLY** must request a waiver in writing addressed to the Director of the Office of Capital Improvements, 451 7th St. SW, Washington, DC 20410, and the local field office. The Office of Capital Improvements will process these requests and provide a response within 14 days of the date of submission. Waiver requests will be granted at HUD's discretion and for good cause. A good cause determination is made on a case-by-case basis and is dependent upon the adequacy of the documentation provided by the PHA seeking a waiver.

The PHA *must* provide the following information and documentation along with its waiver request:

In thorough and concise narrative form,

- ☐ Identify the amount above 25% of the FFY 2018 CFP award both in dollars and by percentage the PHA seeks to transfer to Operating Funds
- ☐ Identify and describe the threat that crime and drug-related activity poses to health and safety of PHA's public housing residents
 - Describe whether this is a new, ongoing, or increased threat
 - Include the most recent crime data of the PHA's locality (e.g., town, city, parish, county) from a recognized source such as local law enforcement or Uniform Crime Reports that lists types and numbers of offenses (may include as an attachment)
- ☐ Identify the applicable development(s)
- ☐ Identify and describe the specific anticrime and antidrug activities the PHA plans to undertake, including the costs of such activities
 - State whether the relevant activities are new or currently ongoing activities
 - For currently ongoing activities, state how the activities are currently funded
 - For new and ongoing activities, state how the PHA intends to maintain such activities, if applicable
 - If applicable, please provide a copy of the police service agreement the PHA intends to fund as an activity by way of the waiver request, demonstrating how the agreement is above baseline;

The PHA *may* provide the following optional information and documentation along with its waiver request:

- ☐ *Optional Attachments:* The PHA may also wish to include supporting narrative or agreements from one or more of the following:
 - Resident Advisory Boards or PHA security personnel;
 - Local Community Policing Organizations;
 - Local officials (e.g. business council executives, or city council executives).

NOTE: The anticrime and antidrug activities described by the PHA **must** be Operating Fund-eligible activities (e.g., costs for security guard salaries or ongoing security services). A waiver request is not necessary for activities which are Capital Fund-eligible (e.g., installation of lighting, fencing, or cameras or training of in-house security staff). For example, installation of security cameras is a Capital Fund-eligible activity, while ongoing maintenance and monitoring

of the cameras are Operating Fund-eligible expenses. A waiver request to install security cameras would be denied because the PHA does not need to transfer Capital Funds to Operations in order to complete this activity, while HUD would consider a waiver request to pay the salary of security staff to monitor the installed cameras.

HUD will notify the PHA of HUD's decision in writing within 14 days of the submission date of the request. If approved, the PHA must ensure that such use of funds is included in its approved 5-Year Action Plan before the PHA proceeds with an approved transfer of Capital Funds to Operating Funds.

Resident Consultation: The PHA is required to hold a public hearing, consult with the Resident Advisory Board (RAB), and submit any comments received from these hearings and consultations.

- There must be a 45-day notification given prior to the hearing.
- The Capital Fund submission must be made available to residents and the Resident Advisory Board prior to the hearing.

PHA Plan Submission: In order to comply with the requirements of 24 CFR 903.7(g), PHAs are required to include a statement of capital improvements needed in the PHA Annual Plan. In the past, a PHA could satisfy this requirement by including copies of its Capital Fund Annual Statement/Performance and Evaluation Report (HUD 50075.1) and Capital Fund Program 5-Year Action Plan (HUD 50075.2) forms with the PHA Annual Plan. While the Capital Fund submission has been decoupled from the PHA Plan, PHAs are still required to incorporate information on capital improvement needs into the PHA Annual Plan. To satisfy this requirement, HUD is requiring PHAs to reference their latest HUD-approved Capital Fund 5-Year Action Plan covering the current Fiscal Year in their PHA Annual Plan, prior to submission of their PHA Annual Plan. PHAs can reference the form by including the following language in Section 8.0 of the PHA Plan Template: "See HUD Form 50075.2 approved by HUD on XX/XX/XXXX."

During the PHA Plan review, HUD field office staff will not be required to review the previously-approved Capital Fund 5-Year Action Plan. HUD will consider the requirement to include a statement of capital improvements needed as satisfied by the reference to the previously-approved Capital Fund 5-Year Action Plan. For the purpose of the annual hearing, PHAs should provide a copy of the form that they reference in the PHA Annual Plan.

Environmental Review: In accordance with the changes in process announced in [Notice 2016-22](#), all activities at project site(s) assisted or to be assisted by HUD must receive environmental clearance before the PHA takes any choice-limiting actions or obligates any funds. HUD has made a programmatic determination under Part 50 that the operating activities listed in Appendix A of Notice 2016-22 are not subject to further environmental review; for any other activities, PHAs must request and receive clearance from either a Responsible Entity or HUD.

HUD Field Offices are not required to withhold approval of 5-Year Action Plans, place manual holds on Capital Funds in eLOCCS, pending receipt of environmental clearance documentation.

However, HUD Field Offices may elect to do so as part of enhanced monitoring.

Even though Field Offices are able to approve 5-Year Action Plans without confirming environmental clearance, the Work Activity Description in a PHA's 5-Year Action Plan must provide sufficient specificity to facilitate effective HUD Field Office review of the plan and subsequent environmental review monitoring. Specificity is required so that Field Office staff can determine the level of environmental review required for a given work activity. PHAs are encouraged to enter information in the Description field on the scope of the activity (e.g., number of units impacted). For example, for a work activity covering roof replacement, a sufficient description may read: "Installing new 20-year roof, as well as gutters and soffits, at low-rise building containing 5 Public Housing units." A work description simply stating "Roof" would be insufficient, because it does not indicate whether the activity will cover full-scale replacement of the roof or simply replacing portions of the roof, a distinction with implications for the level of environmental review required.

Demolition and Disposition Transitional Funding (DDTF): Section 905.400(j) of the Capital Fund Regulation establishes Demolition and Disposition Transitional Funding which provides an additional 5 years of funding for units removed from a PHA's inventory due to demolition or disposition. DDTF replaced Replacement Housing Factor (RHF) funding beginning with FFY 2014 grants. DDTF is calculated in the same manner in which RHF was previously calculated; however, it is included in the annual Capital Fund grant and not issued as a separate grant.

If the PHA has received funding through another program (e.g., Choice Neighborhoods or HOPE VI) for units that will replace the lost units, it is not eligible for DDTF funding in connection with the inventory removal. Public housing units removed from the inventory through homeownership, eminent domain, Disposition Subpart F (mixed-finance modernization), de minimis, or Rental Assistance Demonstration (RAD) inventory removal types or through unit conversion reconfiguration are also not eligible for DDTF.

Contingent on continued eligibility and annual appropriations, PHAs automatically receive 5 years of DDTF in connection with eligible inventory removals. PHAs should ensure the removals are timely and accurately recorded in the PIC system and accurately represented in the annual Capital Fund PIC Certification.

PHAs may use DDTF funding for any eligible activities under the Capital Fund Program (24 CFR 905.200). The funding must be obligated and expended in accordance with the requirements of the Capital Fund formula grant in which the funding has been included.

RHF Transition: Section 905.400(k) outlines the transition from RHF grants to DDTF grants. This transition is now complete. **For FFY 2018 and beyond, no new RHF grants will be issued.** PHAs scheduled to begin receiving RHF 1st increment grants in 2013 completed 5 years of 1st increment funding in 2017 and were transitioned to 5 years of DDTF funding beginning in 2018 to replace the second increment. All remaining ongoing and new funding in connection with inventory removals is being issued as DDTF.

Additional Information: If you have any questions or need additional information, please contact the Field Office staff in your jurisdiction. For assistance from PIH Headquarters, Office of Capital Improvements, you may email your questions to PIHOCI@HUD.gov.

