

CAPITAL FUND PROCESSING GUIDANCE FOR FY 2019 GRANT AWARDS

This notice provides Public Housing Authorities (PHAs) with guidance on the Capital Fund Program (CFP) Award process for Fiscal Year (FY) 2019. The Capital Fund Annual Submission was decoupled from the PHA Plan submission in 24 CFR part 905 which was published on October 24, 2013 and became effective on November 25, 2013.

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, in PIC.

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

PHAs drawing down Capital Funds from grants awarded with 2019 funding or later are bound by the terms and conditions of their Annual Contributions Contract in effect at the time of drawdown. The annual "Grant Funding Exhibits" for 2019 are to be combined with the ACC to constitute the grant agreement for a given grant. The ACC and the Capital Fund ACC Amendment (Capital Fund Grant Funding Exhibit to the ACC) is implemented through the Department's Electronic Line of Credit Control System (eLOCCs). For HUD's grant processing, no additional HUD or PHA signature is needed on the ACC or Capital Fund ACC Amendment. The process is outlined below; however, if local requirements differ, the PHA should have a PHA's signed version in its records before drawing down on any Capital Fund grant.

1. The Department will publish a master Capital Fund 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 2019 Capital Fund formula grants and an appendix listing the following with respect to all Capital Fund formula grants the Department is issuing in FY 2019: 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 continue to include language on the payment voucher page that will indicate that the PHA confirms that drawing down funds from an FY 2019 Capital Fund grant will subject the PHA to the requirements of both the ACC in effect at the time of the drawdown and the FY 2019 Capital Fund ACC Amendment published at the location identified above
(https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund/2018pi/acc).

When a PHA draws down funds from an FY 2019 Capital Fund formula grant, it will become bound to the requirements of the current ACC and the FY 2019 Capital Fund ACC Amendment. HUD's FY 2019 Capital Fund ACC Amendment to the ACC together with the ACC constitute the annual grant agreement for the PHA's public housing program. Again, note that the PHA is in control of its drawdowns and responsible for its use of Capital Fund grants and should local requirements require a PHA signed ACC and Capital Fund ACC Amendment, then those documents should be signed and on record at the PHA before drawdowns.

EPIC: In FY 2019, all PHAs are 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 replaced the paper submission process that was retired at the end of 2017. 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.

HUD continues to use a new Budget Line Item (BLI) structure across EPIC and HUD’s eLOCCS system. In EPIC, HUD has consolidated 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 continue to be able to update budget amounts in EPIC and then LOCCS will be updated to reflect the changes, without Field Offices having to enter these budget revisions into LOCCS. However, budget revisions must continue to comply with requirements that have been enforced in the past through “hard edit checks” in LOCCS, 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 ones submitted in the EPIC system). If a PHA has not held a board meeting on the 5-Year Action Plan that includes FY 2019 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 FY 2019 Capital Fund grants is approved by the board.

Please note that 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 FY 2019.

- 2. PHAs Rejecting a Capital Fund Grant.** If a PHA elects to reject any CFP grant(s), the Executive Director or other Board authorized agent 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 fiscal year.

3. **Management Improvements Cost Limits and Eligible Items. According to 24 CFR 905.315(i)**, the FY 2019 limit for funds budgeted to BLI 1408 Management Improvements will be 10%. Please review the eligible Management Improvements in 24 CFR section 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.** The DUNS registration in the System for Awards Management (SAM) is a requirement to receive Federal awards, and the registration must be active. If you have an expired DUNS number, your FY 2019 Capital Fund grant will be awarded and suspended until the registration is updated. Once the DUNS registration is updated, the Field Office will release the suspension, and the funds will be available for use. Please note that the obligation end date of the FY 2019 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 FY 2019 Capital Fund Grants, PHAs must have a 5-Year Action Plan that includes FY 2019 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, a PHA with a March 31st FYE and a Rolling Plan is currently operating under a plan covering 2018 through 2022. The PHA would create a new 5-Year Action Plan in EPIC with a Starting Year of 2019, providing information on work activities for 2019 through 2023.

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

- For example, a PHA with March 31st FYE is currently operating under a Fixed 5-Year Action Plan for 2015 through 2019. For this PHA's 2019 submission in EPIC, the PHA will enter work activities for 2019.

As was the case in 2018, 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>

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 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.

Required Certifications:

- ☐ Lobbying Form – SFLLL
- ☐ Certification of Compliance w/Public Hearing: (PHA must have a copy of one of the following.)
 - Non-Qualified PHAs** - HUD form 50077 for non-qualified PHAs includes this certification

Y / N	Was the public hearing conducted in FY 2019
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 - Qualified PHAs** - A statement certifying that the PHA conducted a public hearing in compliance with 24 CFR Part 905, signed and dated by the executive director.

Y / N	Was the public hearing conducted in FY 2019
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- ☐ HUD form 50071, Certification of Payments to Influence Federal Transactions
- ☐ Civil Rights Certification: (PHA must have a copy of one of the following.)
 - Non-Qualified PHAs** - HUD form HUD-50077-ST-HCV-HP
 - Qualified PHAs** - HUD form HUD-50077-CR

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 FY 2019 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 process. However, the PHA must conduct a public hearing to cover the new work activities proposed for the 2019 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 and Lobbying Form SFLLL: If the PHA has already submitted the HUD-50077 or HUD-50077-CR and the SFLLL with its PHA Plan for FY 2019, a copy of the document can be submitted.

ADDITIONAL INFORMATION REGARDING THE 2019 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 obligation, expenditures, and disbursements must be recorded to the grant.

One of the reasons to prohibit paying from a non-Capital Fund account and then reimbursing the Capital Fund (if in fact it was Capital Fund eligible work) is that this could involve Anti-Deficiency Act violations. The Anti-Deficiency Act prohibits federal agencies from obligations or expending federal funds in advance or in excess of an appropriation, and from accepting voluntary services. A deficiency with no legal authority to pay with Capital Funds, and reimbursing at a later time, does not cure the Anti-Deficiency violation.

These transactions could also be an illegal augmentation of appropriations. An agency may not augment its appropriation from, or transfer funds to, sources external to the appropriation per se without specific statutory authority. The objective of the rule against augmentation of appropriations is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity.

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 is if our Capital Fund appropriation would allow cost reimbursement/indemnity or revolving fund (it never has).

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

Physical Needs Assessment: In accordance with the Division G, Title II, Section 224 of the Consolidated Appropriations Act, 2019, HUD cannot utilize 2019 HUD Appropriations to require or enforce a PNA requirement. 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. HUD has made available PNA tools and resources and continues to encourage voluntary submissions of PNAs to the Capital Programs Division. For further information see,

https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund/physicalassessment or email hudpna@hud.gov

Flexibility for Capital Fund Amounts: Starting with FY 2015 (including FY 2019) 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 2019 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. Please note the following:

- A PHA with 250 or more public housing units may use no more than 25% of its FY 2019 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 continue to 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. [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 Plan limits such transfer 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.

However, the PHA will 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. If such modification is not a significant amendment/modification, the PHA may submit the amended 5-Year Action Plan to HUD for approval.

- 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 for eligible payments** by the PHA.
- Once a PHA transfers Capital Funds to operations, the PHA must follow the requirements of 24 CFR 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 FY 2019 the limitation in section 9(g)(1) of the Act is increased from 20% to 25%, as it was in FY 2015, FY 2016, FY 2017, and FY 2018. For FY 2019 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 FY 2019 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 FY 2019 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 threat, ongoing, or increased threat
 - Include the most recent crime data of the PHA's locality (i.e., town, city, parish, county, etc.) from a recognized source such as local law enforcement or Uniform Crime Reports that lists types and numbers of offences (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 this waiver request, demonstrating how the agreement is above baseline;
- ☐ *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; OR
 - local officials (e.g. business council executives, or city council executives).

PLEASE NOTE, the anticrime and antidrug activities described by the PHA **must** be Operating Fund eligible activities, for example, costs for security guard salaries or ongoing security services. A waiver request is not necessary for activities which are Capital Fund eligible, for example, installation of lighting, fencing, or cameras or training of in-house security staff. For example, installation of security cameras is Capital Fund eligible, 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 do so, while HUD would consider/approve 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 the 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 satisfied this requirement by including copies of its Capital Fund Annual Statement/Performance and Evaluation Report (HUD 50075.1) and the Capital Fund Program 5 year- Action Plan (HUD 50075.2) forms with the Annual PHA Plan. Now that the Capital Fund submission is decoupled from the PHA Plan, PHAs are still required to incorporate some information on the capital improvement needs in the Annual PHA Plan. To satisfy that requirement, HUD is requiring the PHA to reference its latest HUD approved Capital Fund 5 Year Action Plan covering the current Fiscal Year in its PHA Plan, prior to submission of the 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 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 or place manual holds on Capital Funds in LOCCS, 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 patching portions of the roof, a distinction with implications for the level of environmental review required.

Demolition and Disposition Transitional Funding: 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 on or after October 1, 2012. DDTF replaced RHF funding beginning with FY 2014 grants. DDTF is calculated in the same manner that RHF was calculated; however, it is included in the annual Capital Fund grant and not given as a separate grant.

If the PHA has received funding for units that will replace the lost units through another program, it is not eligible for DDTF. A PHA is eligible for DDTF funding if the PHA did not receive funding for public housing from Choice Neighborhoods, HOPE VI, or other programs that would otherwise provide replacement housing. Public housing units removed from the inventory for homeownership, eminent domain, or unit conversion reconfiguration are not eligible for DDTF grants.

Eligible PHAs automatically receive the 5 years of DDTF upon removal from PIC of the units approved for demolition or disposition.

The PHA may use the funding for any eligible activities under the Capital Fund Program (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.

OED Extensions: The Act and the regulation permit the Secretary or Deputy Secretary (now delegated to the Assistant Secretary) to grant time extensions of the obligation deadline but only in very limited circumstances. The reasons for granting time extensions stated in Section 9(j)(2)(A) of the Act are the following:

1. litigation;
2. obtaining approvals of the Federal, State, or local government;
3. compliance with environmental assessment or abatement requirements;
4. relocating residents;
5. an event beyond the control of the public housing agency (PHA); and
6. Any other reason established by the Secretary in a notice in the Federal Register. In a notice published January 19, 2017 at 82 Federal Register 6615, the Department of Housing and Urban Development (Department) indicated that it will extend the obligation end date for Capital Funds used in a RAD conversion for up to five years from the point when Capital Funds became available to the PHA for obligation.

In addition, the Secretary may extend the time period under Section 9(j)(2)(C) of the Act for an additional period not to exceed 12 months, based on the following:

1. The size of the PHA;
2. The complexity of the capital program of the PHA;
3. Any limitations on the ability of the PHA to obligate amounts allocated for the agency from the Capital Fund in a timely manner as a result of State or local law;
or
4. Such other factors as the Secretary determine to be relevant.

All requests for extensions of the OED must be submitted to HQ prior to the current OED. HUD has no ability to grant extensions of OED deadlines after the deadline. Submissions must be sent to, the Director of the Office of Capital Improvements. A copy of the extension request should be sent to PIH_OCI@hud.gov and the subject line should read as follows: Request for the Extension of the Obligation End Date for (PHA code), for Capital Fund grant (Grant #)

Please note that only the Secretary, or Deputy Secretary of HUD has the authority to approve OED extension requests. In the past the Assistant Secretary for Public and Indian Housing was given this authority to approve extensions in annual HUD Appropriations Acts in order to process the requests more efficiently. PIH does not currently have an Assistant Secretary and all OED extension requests must go through an extended clearance process to get signed by the Deputy Secretary of HUD. As a result, the approval process for these letters can take a significant period of time. If a PHA reaches its OED prior to receiving the approval letter for an OED extension request, then the request will still be processed as long as it was received by HUD prior to the current OED.

Additional Information. If you have any questions or you 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.