



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

Special Attention of:
Regional and Field Office Directors of Public
Housing; Section 8 Financial Management
Center; Public Housing Agencies Administering
Housing Choice Voucher and/or Public Housing
Programs in Louisiana and Mississippi; Regional
Directors; State and Area Coordinators

Notice 2009-3 (HA)

Issued: January 16, 2009

Expires: January 31, 2010

Cross References:

FR Notice 5067-N-01, Vol. 71, No. 145
July 28, 2006, FR Notice 5067-N-02,
Vol. 71, No. 209, October 30, 2006,
FR Notice 5067-N-04, Vol. 73, No. 243
December 30, 2008

Subject: Submission of Calendar Year 2008 Notices of Intent and Fungibility Plans by PHAs in Hurricane Katrina and Rita Disaster Areas Authorized to Combine Section 8(o) and 9(d)(e) Funding Under Section 901 of 2006 Emergency Supplemental Appropriations, as Extended by 2008 Emergency and Supplemental Appropriations

- 1. Purpose:** This Notice informs public housing agencies (PHAs) in Louisiana and Mississippi who are eligible to combine Housing Choice Voucher and public housing operating and capital funds under section 901 of 2006 emergency supplemental appropriations that this flexibility has been extended to include calendar years (CY) 2006, 2007, 2008 and 2009.
- 2. Background:** Division B of the Department of Defense Emergency Supplemental Appropriations to address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 (Section 901 of Public Law No. 109-148, enacted on December 30, 2005), authorized PHAs in federally declared disaster areas as a result of Hurricanes Katrina and Rita to combine assistance under sections 8(o) and 9(d) and (e) of the U.S. Housing Act of 1937 for the purpose of assisting families that were receiving assistance under those programs before the hurricanes and displaced after the hurricanes.

HUD implemented Section 901 through publication in the *Federal Register* on July 28, 2006, of FR-5067-N-01 (Volume 71, Page 42996) entitled *Implementation Guidance for Section 901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006*. HUD subsequently published notice FR-5067-N-04 on December 17, 2008 (Volume 73, page 76673) extending the PHAs most heavily affected by Hurricanes Katrina and Rita the flexibility to combine funds through calendar years 2008 and 2009. Additionally, HUD published FR-5067-N-02 on October 30, 2006, (Volume 71, Page 63340) to extend the deadline for submitting fungibility plans to November 21, 2006, and permit combined funds to be used for eligible purposes under the Housing Choice Voucher program.

Section 4803 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law No. 110-28 enacted May 25, 2007) extended authority for this flexibility to calendar years 2006 and 2007.

Section 11003 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law No 110-329) extended authority for fungibility to calendar years 2008 and 2009. Section 11003 of P.L. 110-329 amends the authorization of provision of Section 901 of P.L. 109-148 to read from calendar years 2006, 2007, 2008, and 2009.

3. Receipt and Review of 2008 Fungibility Plans. HUD will follow the procedures indicated in FR-5067-N-01, published July 28, 2006, for submission and review of CY 2008 Notices of Intent and Fungibility Plans unless otherwise noted below.

- a) **Eligibility:** PHAs listed in FR-5067-N-01 are eligible to submit Notices of Intent and Fungibility Plans for calendar year 2008 program funds.

All 2008 Section 901 Notices of Intent and Fungibility Plans must describe proposed activities and targeted units in detail, and ensure they are consistent with and disclose their relationship to the PHA's public housing and Housing Choice Voucher programs and associated HUD reviews and approvals (e.g., project-based vouchers, waivers, Disaster Housing Assistance Program (DHAP), PHA Plan, public housing demolition or disposition applications). The Notice of Intent and Fungibility Plan must explain how the activities will specifically assist displaced families consistent with and pursuant to the following language in Section 901 of 2006 emergency supplemental appropriations:

SEC. 901. Notwithstanding provisions of the United States Housing Act of 1937 (Public Law 93-383), in order to assist public housing agencies located within the most heavily impacted areas of Louisiana and Mississippi that are subject to a declaration by the President of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in connection with Hurricane Katrina or Rita, the Secretary for calendar year 2006 may authorize a public housing agency to combine assistance provided under sections 9(d) and (e) of the United States Housing Act of 1937 and assistance provided under section 8(o) of such Act, for the purpose of facilitating the prompt, flexible and efficient use of funds provided under these sections of the Act to assist families who were receiving housing assistance under the Act immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricanes.

Fungibility Plans should also provide information on the number, location, intent, and current needs of displaced families that will be targeted to receive assistance under Section 901 activities and indicate how the PHA will ensure that displaced families

voucher or public housing assistance before the hurricanes and were displaced by the hurricanes that will be targeted to receive and how the PHAs will ensure are receiving services or housing under Section 901 activities.

3. CAPITAL FUND PROGRAM ACTIVITIES ONLY

Include a completed CFP/2008 Section 901 Annual Statement/Performance and Evaluation Report, Parts I-III (Found in Form HUD-50075-SA or HUD-50075.1)

d) **Fund Amounts for Fungibility:** PHAs must provide a figure that represents the highest amount of CY 2008 funding they project will be available to be combined or used for other program purposes under Section 901 authority, after taking into consideration such factors as the conversion of families to regular vouchers when the Disaster Voucher Program (DVP) ends February 29, 2009; withholding of vouchers under the Re-Occupancy policy for families returning to their pre-disaster housing, and/or increased HAP costs due to market rent increases or portability. Refer to PIH Notices 2007-17 (*Disaster Voucher Program*) and 2007-3 (*Reoccupancy Policies for Pre-Disaster HUD Assisted and Special Needs Families*).

e) **Summary of Key Dates:**

DATE	WHO?	WHAT?
January 31, 2009 DUE DATE	PHA	CY2008 Notice of Intent and Fungibility Plan <ul style="list-style-type: none"> • Activities • Estimated <u>or</u> Final Funding Requested
March 15, 2009	HUD	Notify PHAs of any Plan Deficiencies.
March 31, 2009	PHA	Last Day to Submit Plan Revisions, Corrections, Clarifications.
April 15, 2009	HUD	Last Day to Authorize CY2008 Section 901 Fungibility

f) **Due Date: January 31, 2009.** PHAs must submit their CY2008 Notices of Intent and Fungibility Plans to HUD no later than this date and mail them to the Office of Policy, Program, and Legislative Initiatives, Public and Indian Housing, Attn: Bessy Kong/Sherry McCown, 451 7th St., S.W., Room 4116, Washington D.C., 20410. To expedite processing, PHAs should also send their plans and exhibits through electronic mail to: **Sherry.Fobear-McCown@hud.gov.**

g) **Deficiency Notifications: March 15, 2009.** HUD will notify PHAs of any deficiencies in or clarifications required of their plans by this date.

h) **Plan Revisions and Clarifications: March 31, 2009.** PHAs must submit any revisions or clarifications of their plans in response to HUD notifications, inquiries, or comments by this date.

- i) **HUD Plan Review:** HUD will review 2008 Fungibility Plan submissions and make final determinations to authorize Calendar Year 2008 Section 901 flexibility no later than **April 15, 2009**.

4. Reporting Requirements for Activities and Use of Funds for Calendar Year 2008.

Refer to Section V.B., *Reporting Requirements for Activities and Use of Funds Provided for Fungibility Under Section 901*, parts 1-3 of FR-5067-N-01. PHAs will continue to submit Annual and Final Reports and Financial Data Schedules in accordance with the Notice, but must report Calendar Years 2006, 2007 and 2008 separately:

- a) **Annual Report.** PHAs with an approved Notice of Intent and Fungibility Plan must provide annual progress reports to their HUD field office. They must address:

- (1) The amount of funds, by source program, being combined under Section 901 fungibility,
- (2) The proposed uses of those combined funds,
- (3) The amount of funds obligated during the year from each source program,
- (4) The cumulative total amount of funds obligated,
- (5) The total amount of funds expended during the year from each source; and
- (6) The cumulative total amount of funds expended.

Due Dates for Annual Report: FR-5067-N-01 states that annual reports must cover the 12-month period ending September 30 and are due at the field office within 45 calendar days. The first reporting period for Calendar Year 2008 fungibility plans will cover the period October 1, 2007 through September 30, 2008. The first reporting period for Calendar Year 2009 fungibility plans will cover the period October 1, 2008, through September 30, 2009.

- b) **Final Report.** A final report is due at the end of the fungibility period, which is the earlier of either the expenditure deadline **for Calendar Year 2006, 2007, or 2008 fungibility by program use** or when the PHA has expended all funds. PHAs that combined funds under Section 901 shall submit to their local HUD field office a summary report of how funds were combined, the original Notice of Intent and planned activities for 2006, 2007, and 2008, and actual activities and results for the 2006, 2007 and 2008 plans.
- c) **Financial Data Schedule Reporting.** Continue FDS reporting in accordance with Section V.B.4. of the Section 901 implementation notice. That notice spells out that once the PHA is approved for Section 901 Flexibility, the PHA must still report the original program revenues in the programs (Capital Fund Program, Low Rent Public Housing Program, or Housing Choice Voucher Program) the grant or subsidy funds were initially intended for on the Financial Data Schedule (FDS). Any original program revenues needed to assist families displaced by Hurricanes Katrina or Rita under Section 901 fungibility would then be transferred from one or all of the above programs to a new column on the FDS called “Other Federal Program – Section 901”

at the time they are needed for actual Section 901 expenditures. For the HCV program, the PHA will use Operating Transfers (for current funding) on FDS Line 10010 to report the transfer in to the “Other Federal Program-Section 901” and FDS Line 10020 to report the funds leaving the HCV program. For the LRPB and Capital Fund program, the PHA will use Transfers Between Programs and Projects (for current funding) on FDS Line 10093 to report the transfer in to the “Other Federal Program-Section 901” and FDS Line 10094 to report the funds leaving the Capital Fund or LRPB program. If the funds transferred were received in a prior year, the transaction should be reported as an Equity Transfer on Line 1104 of the current FDS between the affected programs and include an adequate explanation of the details surrounding the transfer. Further, an explanation of this fungibility is required to be made by the PHA in the "Comments Link" in both the un-audited and audited financial submissions. This will help ensure that all users and readers of the financial data are aware that the PHA participated in this funding Flexibility.

To add the “Other Federal Program-Section 901” column on the FDS, click on the Programs Tab, click Add Program, then select “Other Federal Activity-Sect. 901 Emergency Supplemental Appropriations” under the Federal Agency drop down list, click Go under Federal Agency (right side of page), then click the Add Program button on the center of the page. Once the funds have been transferred to the “Other Federal Program-Section 901,” all activity related to the funding flexibility must be accounted and reported in this new column on the financial data schedule.

5. **Timely Use of Funds.** The Section 901 FR implementation notice indicates that Housing Choice Voucher or public housing operating funds a PHA combines and uses for Capital Fund program purposes must be expended within 5 years from the date of HUD’s approval of the Section 901 Fungibility Plan, or as authorized by the Assistant Secretary for Public and Indian Housing. PHAs must expend Voucher or Public Housing Capital Funds used for public housing operational costs within one year.

Calendar Year (CY) Fungibility Plan	HCV or public housing operating costs 5-year expenditure date	Public housing capital costs 1-year Expenditure date
2006	January 1, 2011	January 1, 2008
2007	January 1, 2012	January 1, 2009
2008	January 1, 2013	January 1, 2010
2009	January 1, 2014	January 1, 2011

To facilitate Section 901 administration, the 5-year expenditure date for Calendar Year 2006 fungibility plans is January 1, 2011, for Calendar year 2007 fungibility plans the 5-year expenditure date is January 1, 2012, and for Calendar year 2008 fungibility plans is January 1, 2013. The 1-year expenditure date for Calendar Year 2007 fungibility plans date is January 1, 2009 and for Calendar Year 2008 fungibility plans the 1-year expenditure date is January 1, 2010.

Under Section 901, HUD expects that any funds that may be combined for Housing Choice Voucher program activities will be expended within reasonable timeframes in consideration of proposed activities.

If the combined **2006, 2007 and 2008** funds are not expended according to these time frames, the PHA loses the flexibility provided under this Notice and the funds revert back to original program uses, including applicable funding terms. For example, if a PHA combines voucher funds with Capital Funds for public housing reconstruction purposes, and if the Calendar Year 2007 and 2008 voucher funds are not expended for those purposes by January 1, 2012 or January 1, 2013 respectively, they revert back to vouchers.

6. **Program and Other Federal Requirements.** For end program uses of combined funds authorized under Section 901, PHAs must comply with all applicable program and Federal regulations and requirements, including those that are more fully described in notices, handbooks, or other binding guidance, and that are applicable to Section 8(o) and Section 9(d) and (e) activities. These include but are not limited to program regulations for Project-Based Vouchers (24 CFR Part 983), Section 8 Tenant Based Assistance: Housing Choice Vouchers (24 CFR Part 982), Public Housing Modernization (24 CFR Part 968), Public Housing/Mixed-Finance Development (24 CFR Part 941), Public Housing Operating Fund (24 CFR Part 990), Section 8 and public housing family self-sufficiency programs and fair housing and civil rights-related requirements set forth at 24 CFR §5.105(a).
7. **Paperwork Reduction Act Statement.** The information collection requirement contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0245, which expires 2/28/2010. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.
8. **Additional Information.** Any questions related to this notice should be addressed to the Office of Policy, Program, and Legislative Initiatives at (202) 708-0713.

/s/
Paula O. Blunt, General Deputy Assistant Secretary
for Public and Indian Housing

SECTION 901 CALENDAR YEAR 2008 FUNGIBILITY PLAN SUBMISSION REQUIREMENTS

DUE DATE: January 31, 2009

(A) A NOTICE OF INTENT TO INVOKE SECTION 901 FLEXIBILITY

(B) A DETAILED SECTION 901 FUNGIBILITY PLAN

(DOCUMENT)

1. **Board Resolution.** A resolution from the PHA Board of Commissioners certifying that the flexibility will be used to facilitate “prompt, flexible, and efficient use of these funds to assist families who were receiving housing assistance immediately prior to Hurricanes Katrina or Rita and were displaced from their housing by the hurricanes.”

NOTE: For items 2, 3, and 4 below, **complete the table** on the following page.

(TABLE)

2. **Source of Funds for Calendar Year 2008 Section 901 Fungibility.** Identify the name of the program from which funds will be provided for purposes of fungibility.

3. **Amount of Sources of Funds.** Identify the exact dollar amount of funds, by program source, to be provided for fungibility purposes, including the grant number(s) and grant year(s) (grant numbers not applicable to vouchers).

4. **Use of Funds Provided for Calendar Year 2008 Section 901 Fungibility.** Identify the name of the program(s) with which funds are being combined or for which they will be used.

(NARRATIVE)

5. **Detailed Description of the Proposed Uses of the Combined Funds.** *e.g.*, the number of units to be renovated, repaired, acquired, or built, and the types of administrative functions to be undertaken.

NOTE: Detailed, narrative descriptions **must** be provided to explain and justify proposed activities for funds to be used under Section 901 authority. They may be provided as a separate attachment or included in the fourth column of the table on the following pages.

(FORM)

6. **Capital Fund Program Annual Statement/Performance and Evaluation Report, Parts I–III (part of form HUD–50075–SA or form HUD-50075.1).** For program source funds “funged” to and used for Capital Fund activities.

SECTION 901 CALENDAR YEAR 2008 FUNGIBILITY PLAN SUBMISSION REQUIREMENTS
DUE DATE: January 31, 2009

(C) WHERE AND HOW TO SUBMIT:

One copy to the Public Housing Director of the HUD office in New Orleans, Louisiana, or Jackson, Mississippi, as applicable

Mail Original to:

HUD Headquarters
Office of Public and Indian Housing
Office of Policy, Program, and Legislative Initiatives
451 Seventh Street, SW., Room 4116
Washington, DC 20410-5000
Attention: Bessy Kong/Sherry McCown.

Email to:

Sherry.Fobear-McCown@hud.gov

Section 901 Calendar Year 2008 Fungibility Plan		APPENDIX A	Name of PHA: HA Code:
Source Of Funds for Fungibility	Use Of Funds Program that Will Use Funds	Section 901 CY 2008 Fungibility Categories (HUD USE ONLY)	Narrative Description Of Activities and Related Costs
Public Housing Capital Fund: Amount: \$	Housing Choice Voucher Section 8(o)		<p>Description of Activities:</p> <p>Total Costs: \$</p> <p>Cost Breakdown:</p>

