



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

Special Attention of:

Public Housing Agencies;
All Public Housing Directors;
HUD Field Offices; HOPE VI
Coordinators

NOTICE: PIH-2005-22 (HA)

Issued: June 24, 2005
Expires: June 30, 2006

**Cross References: Notices: PIH
2003 -10 (HA), PIH 2004 - 15**

SUBJECT: Fiscal Year 2005 Capital Fund Grants Processing Notice

- 1. Purpose.** The purpose of the Notice is to provide public housing agencies (PHAs) with information and guidance on the Fiscal Year (FY) 2005 Capital Fund. This Notice also provides guidance on the Replacement Housing Factor (RHF) grants.
- 2. Appropriations.** President Bush signed the HUD Appropriations Act for FY 2005 ("Appropriations Act") on December 8, 2004. The Appropriations Act provided \$2,600,000,000 for the Capital Fund. A rescission provision in the Appropriations Act reduced the amount to \$2,579,200,000.

The Appropriations Act also contained a number of set-asides for items such as technical assistance, emergencies and natural disasters, the working capital fund, and Neighborhood Networks. Congress did not include a set-aside for timely obligators in the FY 2005 Appropriations Act.¹ The sum total of these statutory set-asides post-rescission is \$149,147,200. Therefore, a total of approximately \$2,430,052,800 is available for the Capital Fund formula. An additional \$835,606 in recaptured funds is also available for redistribution to PHAs that are Public Housing Assessment System (PHAS) High Performers.

PHAs designated as High Performers under PHAS, will receive a three percent bonus (24 CFR 905.10(j)), along with their share of the redistributed recaptured funds (24 CFR 905.120(c)(3)).

- 3. Formula Calculation.** The Capital Fund formula regulation at 24 CFR Section 905.10(f) gives the Department the authority to establish a date for reporting PHA building and unit data for the purpose of calculating the formula. Additionally, 24 CFR Section 905.10(f)(4) states:

¹ In two prior fiscal years, FYs 2002 and 2003, Congress included in the respective Appropriations Acts a set-aside for PHAs that obligated Capital Funds in a timely manner for specific fiscal years. This set-aside was determined in the annual Appropriations Acts, and is not in the Capital Fund program regulations.

“For developments losing units as a result of demolition and disposition, the number of units on which capital funding is based will be the number of units reported as eligible for capital funding as of the reporting date.”

The FY 2005 Capital Fund formula was computed based on building and unit data under management in the PIH Information Center (PIC) system as of **September 30, 2004**.

- 4. FY 2005 Funding Package Available on the Web.** In FY 2005, the Department will not mail Capital Fund packages to PHAs. The FY 2005 funding package will be available electronically on the HUD website, Office of Public and Indian Housing Office of Capital Improvements, at:

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

We recommend that you bookmark this link for future reference. The Department is also sending each PHA an email (based on PHA addresses in the PIC system) with the link to this website indicating the date the funding packages will be available. The Department will publish a schedule announcing the availability of the funding package at the same web address.

A PHA is to access the funding package via the internet and print it. The FY 2005 Capital Fund package will include: (1) a letter to the Executive Director describing the PHA's funding and (2) an Annual Contributions Contract (ACC) Amendment for each grant. In some instances, a PHA may have as many as three grants and, therefore, three ACC Amendments (e.g., an Amendment for the formula grant, an Amendment for the first increment RHF grant, and an Amendment for the second increment RHF grant).

The above website has a listing of PHAs that are eligible to request a second increment of RHF funding in FY 2005.

- 5. Data Errors in Calculation of the Capital Fund FY 2005 Formula.**

Capital Fund grants are calculated based on data available at a certain point in time. HUD is not authorized by the FY 2005 Appropriations Act to make adjustments to prior year obligations with FY 2005 funds. As such, there will be no additional funding to correct errors from prior year Capital Fund grants. This includes data errors in building/unit characteristics. PHAs are responsible to ensure that the data in the PIC system is accurate.

- 6. Timetable for Submission of FY 2005 Capital Fund ACC Amendments to HUD.**

A timeline, which establishes a single commencement date for ALL PHAs, will be posted on the HUD website, Office of Public and Indian Housing Office of Capital Improvements, at <http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm>. The date on which HUD approves the PHA Plan does not effect the “single commencement date” for the purposes of obligating its FY 2005 Capital Fund grant.

- 7. PHA Submission of the ACC Amendments for FY 2005 Capital Fund Grants.**

PHAs must sign and date three ACC Amendments for each grant and send them to the local HUD Field Office (see paragraph 4 for a discussion of the FY 2005 Capital

Fund electronic funding package). The local HUD Field Offices must receive the ACC Amendments along with the amended Annual Statement based on the actual Capital Fund grant by the date specified in the timeline which will be posted to <http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm> website. Failure to submit the signed and dated ACC Amendments to the Field Office by the specified time will result in the PHA losing the Capital Fund grant(s) for FY 2005.

The effective date of the Capital Fund grant is the date the Field Office signs and executes the ACC Amendment. All HUD Field Offices **must execute all FY 2005 Capital Fund ACC Amendments on the same day. The date will be specified in the timeline which will be posted on the website.** The timeline identifies the following dates: (1) the date PHAs are to transmit the signed ACC to the Field Offices; (2) the date Field Offices are to sign and date all FY 2005 ACC Amendments; (3) the date that FY 2005 funds are available for obligation by the PHA; (4) the commencement date for obligation and expenditure for all formula² grants; and (5) the obligation and expenditure end dates for FY 2005 formula grants.

The Department will electronically obligate the FY 2005 Capital Funds through the Office of the Chief Financial Officer. Field Offices are not to send copies of the ACC Amendment(s) to the Fort Worth Accounting Center. A copy of the properly **signed and dated** ACC(s) should be kept on file at the local Field Office. A copy of the properly **signed and dated** ACC Amendment(s) must be sent to the PHA.

8. PHAs that Fail to Submit an ACC Amendment, Fail to Submit the ACC Amendment On time, and Refuse the Capital Fund Grant(s).

If a PHA chooses not to participate in the Capital Fund Program this fiscal year, the PHA is to advise its local HUD Field Office in writing no later than the date identified on the timeline. Any PHA, regardless of its intent, that does not submit a signed and dated FY 2005 Capital Fund ACC by the date identified on the timeline posted on website <http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm> will not receive its FY 2005 Capital Fund grant. These funds are not held for the PHA. To the extent provided by law, a PHA will still be eligible to receive Capital Funds in subsequent fiscal years following submission and approval of all required documents.

9. FY 2005 PHA Plan and Capital Fund Approval Requirements. The United States Housing Act of 1937 (the Act) and the regulations at 24 CFR Part 903, require that a PHA prepare annual and five-year PHA Plans. The PHA's Plan must include a description of how the PHA proposes to use its Capital Funds including its RHF grant funds. The FY 2005 Capital Funds will be available to all PHAs that have an approved Capital Fund Five-Year Action Plan.

The PHA can, therefore, obligate Capital Funds for any activity in its Capital Fund Five-Year Action Plan, as long as an environmental review has been completed in conjunction with the Five-Year Action Plan. An environmental review cannot be

² The obligation and expenditure start and end dates for RHF grants are based on the timelines in the HUD-approved RHF Plan. The obligation start date for an RHF grant with an approved RHF Plan is 30 days after the date proposed for the submission of the development proposal to the local HUD Field Office.

done in conjunction with the Five-Year Action Plan unless it contains information with sufficient specificity for the individual projects and activities proposed.³ The environmental review of the PHA's proposed activity shall be conducted in accordance with either Part 50 or Part 58. A PHA cannot obligate its FY 2005 Capital Funds until it has complied with HUD's environmental requirements.

In some instances, the PHA will have an approved Capital Fund Five-Year Action Plan, but not an approved Annual PHA Plan for the current fiscal year. PHAs shall continue to work with their local Field Offices to get their Annual PHA Plan approved as required by 24 CFR Part 903.

10. Automatic Spread of Interim Budget. The Line of Credit Control System (LOCCS) has been programmed to automatically spread the budget among the Budget Line Items (BLIs) referenced in Table 1 for all PHAs with an executed ACC in accordance with the percentages described in Table 1.

Table 1

BLIs and Percentages Used to Spread Entire Budget in LOCCS – All PHAs
<ul style="list-style-type: none"> • BLI 1408 Management Improvement –20% of the grant authorized amount • BLI 1410 Administration –10% of the grant authorized amount • BLI 0110 Initial Budget - the remainder of grant authorized amount (i.e., 70%)

BLI 0110 is an account established as a general location to put the balance of the funding. This automatic spread will create an interim budget in LOCCS. PHAs are required to provide a revised Annual Statement to their local Field Offices along with the signed and dated ACC Amendment. The revised Annual Statement provides HUD with a final budget based on the actual FY 2005 Capital Fund grant(s) awarded to the PHA. Once approved, the Field Office can spread the final budget in LOCCS based on the PHA's revised Annual Statement. PHAs should not operate a Capital Fund grant under an interim budget for more than six months.

Where a PHA with an interim budget is reporting obligation and expenditures in LOCCS, the PHA must enter items or activities into LOCCS using the appropriate BLI (e.g., a signed contract for demolition of a portion of the development is to be entered under *BLI 1485 (Demolition)* pursuant to the Comprehensive Grant Guidebook, 7485.3). For PHAs that have an approved FY 2005 Annual PHA Plan and budget, the Field Office can proceed to spread the approved budget in the LOCCS. PHAs may exercise fungibility between work items but will be required to reflect these work items in their FY 2005 Annual Plan submissions.

³ In cases where the PHA does not have enough specificity in the Five Year Action Plan to conduct an environmental review, the environmental review shall be conducted at a later time based on the activities in the PHA's Annual PHA Plan or Annual Statement.

11. FY 2005 Capital Fund and Sanctions for Failure to Obligate in Accordance with the Act. Section 9(j) of the Act and 24 CFR Section 905.120 (the regulation) require 90 percent of Capital Funds to be obligated within 24 months of the date the funds are made available. The Act and the regulation provide sanctions for PHAs that do not obligate in a timely manner. Specifically, HUD is to withhold a 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 new Capital Fund grant(s). The penalty for noncompliance will be to reduce the new Capital Fund grant(s) by 1/12 for every month the PHA was in noncompliance⁴.

The FY 2005 Appropriations Act does not contain the requirement to recapture Capital Fund grants that do not meet the obligation deadline, which was in the FYs 2002 and 2003 Appropriations Acts. As a result, the withholding, and penalty sanctions mentioned above will be implemented for FY 2005 Capital Fund grants as it was for FY 2004 Capital Fund grants.

The Department uses the obligation information entered into LOCCS as of the obligation end date and/or the latest information reported by the PHA in LOCCS for the purpose of determining whether or not a PHA has met the obligation deadline. PHAs are responsible for entering the obligation and expenditure information into LOCCS on a monthly basis. PHAs are likewise responsible for the accuracy of the information that is reported. Any obligation and/or expenditure information that the PHA enters into LOCCS must be supported with written documentation that is available to HUD upon request.

12. Withholding and Sanctions of FY 2005 Capital Fund for Slow Obligation of Capital Fund. In FY 2005, PHAs will be subject to withholding and a 1/12 penalty for noncompliance with Section 9(j) of the Act and 24 CFR Section 905.120, if the PHA fails to obligate 90 percent of a grant by the obligation deadline. All Capital Fund grants (i.e., formula, RHF, emergency and disaster grants) are funded from the annual Capital Fund appropriations and are therefore subject to the requirements of the Act and the regulations. Additionally, any grant that was not in compliance in FY 2004 that did not become known to HUD until after the FY 2004 funds were distributed in September 2004 will be subject to penalties in FY 2005.

For example, in the following instances the PHA would be subject to sanctions and withholding in FY 2005.

- a. A Capital Fund formula grant, which was originally funded in FY 2002 or FY 2003 that was not obligated to 90 percent by the obligation end date, and whose obligation end date occurred between 9/15/04 and the date funds are made available in FY 2005.
- b. A Capital Fund grant that was not in compliance with section 9(j) of the Act in FY 2004 but whose noncompliance did not become known to

⁴ In accordance with the Act, the Department deducts 1/12 of the total Capital Fund grants for the fiscal year, which includes the formula grant, and the RHF grant(s).

HUD until after the funds were made available in FY 2004.

- c. A Capital Fund emergency, natural disaster or RHF grant that was not obligated to 90 percent by the obligation end date which occurred between 9/15/04 and the date funds are made available in FY 2005.

Note that some Moving to Work (MTW) PHAs are exempt from the Capital Fund obligation and expenditure deadlines during the term of their MTW Agreements (see Attachment 1 for more discussion on MTW participants).

13. PHA Monthly Obligation and Expenditure Reporting. PHAs must report on a monthly basis cumulative obligation and expenditures in the LOCCS for each open grant or grants that have not been audited. The Department uses LOCCS to monitor compliance with the obligation and expenditure deadlines. If a PHA is late reporting obligation and expenditure information, LOCCS will prevent drawdowns for all grants in those program areas. Failure to do so will effectively delay the Department the PHA with its FY 2005 grant.

- Beginning in September 2004 LOCCS was modified so that PHAs could continue to report obligation and expenditure information after the obligation deadline; and
- PHAs that are not in compliance are required to report in LOCCS every 30 days on the anniversary of the obligation end date. For example, a PHA whose obligation end date was May 25, 2004 would report on June 25, 2004, July 25, 2004 etc., rather than at the end of the month.

Appeals of sanctions (e.g., withholding, grant reduction, or recapture) will not be entertained where a PHA failed to accurately and/or timely report obligations and expenditures.

14. Criteria for PHA Requests for Extensions of the Obligation Deadline.

Only HUD' Secretary or Deputy Secretary can approve extensions of the obligation deadline for Capital Fund grants. Extensions of the obligation deadlines shall only be justified based on the criteria in Section 9(j) of the Act. Specifically, extensions may be granted if failure of the agency to obligate in a timely manner is attributable to:

- Litigation;
- Obtaining approvals of the Federal Government or a State or local government;
- Complying with environmental assessment and abatement requirements;
- Relocating residents;
- An event beyond the control of the public housing agency; and
- Any other reason established by the Secretary by Notice in the *Federal Register* (Note: HUD has not established other reasons under this authorization.)

The Secretary or Deputy Secretary may extend the time period under Section 9(j)(1) of the Act for an additional period not to exceed 12 months, based on the following:

- The size of the public housing agency;

- The complexity of the capital program of the public housing agency;
- Any limitations on the ability of the public housing agency to obligate the amounts allocated for the agency from the Capital Fund in a timely manner as a result of State or local law; or
- Such other factors as the Secretary determines to be relevant.

15. Submission of PHA Requests for Extensions of the Obligation Deadline. All requests for extensions of the obligation deadlines, regardless of fiscal year, must be received in Headquarters no later than 45 days prior to the obligation end date for the grant in question. Requests submitted after that date will be denied. Requests are to be submitted to Headquarters for review. A copy of the extension request should be sent to the local Field Office as a reference. The PHA should fax the extension request to Mr. William Thorson at (202) 401-3997 (this is not a toll-free number). All fax submissions must be followed by a hard copy, which should be mailed in. Submit requests for extension to the following address:

William C. Thorson, Director
Office of Capital Improvements
451 7th Street SW, Room 4146
Washington, DC 20410.

16. Expenditure Deadlines for Capital Fund Grants. If a PHA fails to fully expend any Capital Fund grant (i.e., formula, RHF, Emergency or Disaster grant) by the expenditure deadline, HUD will immediately recapture any funds not expended by the deadline. There is no provision in the Act to extend the expenditure deadline date except where the Secretary or the Deputy Secretary has previously approved an extension of the obligation deadline.

Note that some MTW PHAs are exempt from the Capital Fund obligation and expenditure deadlines during the term of their MTW Agreements (see Attachment 1 for more discussion on MTW participants).

17. FY 2006 Capital Fund Formula. PHAs must update their PIC data no later than **September 30, 2005**, in anticipation of calculating the FY 2006 Capital Fund.

18. Replacement Housing Factor (RHF) Grants

a. General.

The Capital Fund formula rule at 24 CFR 905.10(i) provides that a PHA may Receive RHF grants for public housing units demolished or sold for a period of up to five years. A PHA may only be given RHF funding for public housing units that were not funded for replacement public housing units under public housing develop, Major Reconstruction of Obsolete Public Housing (MROP), HOPE VI, or other programs that would otherwise provide replacement housing. All replacement housing must be undertaken in accordance with public housing development regulations found at 24 CFR Part 941, which includes requirements for mixed-finance development.

A PHA may request funding for an additional five years. In order to be eligible for a second increment, a PHA must leverage substantial additional funding from sources other than public housing funds. Additionally, all required PHA Plans must have been approved, and the PHA must be in compliance with statutory obligation and expenditure deadlines.

Section 905.10(i)(7) provides that RHF funds must be obligated:

- within 24 months from the date that the funds become available; or
- with specific HUD approval, 24 months from the date the PHA accumulates adequate funds to undertake replacement housing.

A PHA may proceed with submission of a development proposal to HUD and obligation of 90 percent of the RHF grant within 24 months from the date the funds were made available and expend 100 percent of the RHF grant within 48 months from when the funds were made available. If, however, a PHA wants to accumulate its RHF grants for several fiscal years and delay the obligation start date, it must: (1) submit an RHF Plan, as described in paragraph 18(c) of this Notice, and (2) submit a development proposal and proceed in accordance with their approved RHF Plan. If the PHA requests an additional five years of funding, it must proceed with the development of the first five-year increment and submit a second, discrete, RHF Plan based on the funding provided in years 6 - 10. In no case should the development or developments planned with first increment RHF funding be planned in such a way that completion of that development or developments relies on HUD funding of the second increment of RHF. PIH Notice 2004-15 provided guidance on RHF grant calculation and other related topics. The Office of Capital Improvements will also provide additional guidance on RHF on its website.

b. Limitations on New Construction.

In submitting its development proposal⁵ pursuant to 24 CFR Part 941, a PHA must comply with Section 9(g)(3) of the Act. Section 9(g)(3) provides that a PHA may not construct any new units if the construction would result in a net increase from the number of public housing units owned, assisted or operated by the PHA on October 1, 1999, including any public housing units demolished as a part of any revitalization effort. This provision does not apply to the development of additional public housing through the acquisition (with or without rehabilitation) of units from the open market.

The PHA may construct new units in excess of the number of units in its inventory on October 1, 1999, but will not be eligible for additional funding under the Capital or Operating Fund formulas. The PHA may also construct new units in excess of the number of units in its inventory on October 1, 1999, if the units are part of a mixed-finance project or otherwise leverage significant additional private or public investments and the estimated cost of the useful life of the project is less than the estimated cost of providing tenant-based assistance under Section 8(o) of the Act for

⁵ A development proposal is separate and distinct from a PHA Plan required under 24 CFR Part 903 or a RHF Plan required by this Notice. Submission of a development proposal to the Field Office for approval is required any time a PHA proposes to build or acquire new public housing units to add to the inventory.

the same period. In the later instance, the additional units would be eligible for Capital and Operating funds.

Field Offices will be responsible for reviewing each development proposal, in accordance with Section 9(g)(3). The PIC is being modified to provide data elements to reflect these requirements. Field Offices will be responsible for ensuring that PIC contains the appropriate data for each development proposal approved and to indicate those units that should be excluded from the Capital or Operating Fund formulas.

c. RHF Plans.

An RHF Plan is a description of the steps that a PHA will carry out to provide replacement housing. A PHA must submit a separate RHF Plan for the first and the second increment of funding. RHF Plans must contain the following information.

1) A Brief Description.

In some instances, a PHA will propose developing more than one new project with its first or second increment funds. As a result, the RHF Plan should contain a description and schedule for each new proposed project. In addition, the use of RHF funds must be contained in the PHA Plan. At a minimum, RHF Plans must contain the information defined below:

- a. The total units to be developed;
- b. The development method (e.g., new construction, acquisition with or without rehabilitation); and
- c. Structure type (e.g., single family, row, walk-up, etc.).

2) Schedule. A schedule of major development milestones of significant events including but not limited to:

- PHA hires architect;
- Plans and specifications completed;
- Submission of development proposal to the HUD Field Office;
- Submission of site acquisition proposal to the HUD Field Office;
- Construction start;
- Date of Full Availability (DOFA); and
- End of Initial Operating Period (EIOP).

The latest date that a PHA can submit a development proposal for a PHA's first five years of RHF funding is 90 days after execution of the RHF ACC by the HUD Field Office, or the due date of the PHA's Annual Plan for that year (the fifth year), whichever is later. The latest date that a PHA can submit a development proposal, for the second five-year increment of RHF funding, is 90 days after execution of the ACC by the HUD Field Office, or the due date of the PHA's Annual Plan for the seventh year, whichever is later. However, a PHA may submit a development plan earlier.

RHF Grants for Multiple Developments. A PHA may be able to develop more than one development with the accumulation of funds from an increment. The schedule in the RHF Plan must include a separate schedule of the milestones described in the preceding paragraph for each new project being developed.

The deadline for submission of the development proposal for each new project is the due date of the PHA Plan for the fifth year for the project that has been receiving RHF grants the longest.

- 3) **Amount and Sources of Funding**. The RHF Plan must include information describing the amount and sources of funding for the replacement housing. The PHA must analyze the cost of the proposed housing against the Total Development Cost (TDC) limits.
- 4) **Leveraging for Second Increment Plans**. In accordance with HUD regulations at 24 CFR 905.10(i)(2)(ii), as a prior condition of a PHA's receipt of the second increment of RHF funding, a PHA must obtain a firm commitment of substantial additional funds, other than public housing funds, for replacement housing, as determined by HUD.

A PHA must document the resources it proposes to use as leverage, including the name of the organization providing the resource, the dollar value of the proposed resource, and the proposed use. PHAs must use funds other than public housing funds for leveraging. Examples include: Community Development Block Grant (CDBG) funds; tax credits; State or local grants; private mortgage-secured loans and other debt; donations and contributions; and housing trust funds.

In addition, leveraging may include funds borrowed by the PHA through such sources as bank loans and bond issuances that are to be repaid with RHF funds. When borrowing funds, PHAs may pledge up to 50 percent of the RHF funds towards payment of debt service. A PHA may use 100 percent of its RHF funds to make debt service payments. In the case of RHF funds the PHA should not pledge any amount greater than the PHA would accumulate in five years. Headquarters must approve any pledge of RHF funds or other Capital Funds by a PHA.

Definition of Substantial Additional Funds. As stated above, a PHA's RHF Plan must demonstrate "substantial leveraging". This standard is met where a PHA leverages an amount of non-public housing funds at least equal to one-third of the total RHF funds in the first five-year increment. For example, a PHA receiving \$105,000 in RHF funding in each of the first five years, would have received a total of \$525,000 in RHF funds. One-third of \$525,000 is \$175,000. Therefore, the PHA must leverage funding from non-public housing sources totaling at least \$175,000 to qualify for a second five-year increment of RHF funds.

Definition of Firm Financial Commitment. For each resource you list, you must provide a commitment document, such as a letter,

memorandum of understanding, agreement to participate, city council resolution, or other evidence of the resource to be committed as part of your RHF Plan. The commitment cannot be conditioned on anything other than the receipt of the RHF grant. An official of the organization legally authorized to make commitments on behalf of the organization must sign the commitment document.

5) **PHA Plan and Obligation/Expenditure Status for Second Increment Plans.**

Second Increment RHF plans must include a statement addressing: (1) the approval status of the Five Year PHA Plan and all Annual Plans (FYs 1998 – 2005); and (2) compliance with obligation and expenditure deadlines in FYs 1998 – 2004 for all Capital Fund grants.

d. **Submission of RHF Plans.**

- 1) **First Increment RHF Plans.** PHAs receiving their first RHF grants in FY 2005, must submit their RHF Plan to the HUD Field Office in accordance with the schedule identified on the PIH_OCI@HUD.GOV website. PHAs must also send a PDF or word file on CD Rom, which contains a copy of the First Increment RHF Plan and the development proposal(s) to the Office of Capital Improvements, attention William Thorson. Field Offices are to review and approve or disapprove the RHF Plans within 30 days.
- 2) **Second Increment RHF Plans.** As prescribed in PIH Notice 2004-15, PHAs requesting a second increment of RHF funding in FY 2005 were required to submit Second Increment RHF Plans no later than **October 1, 2004**. PHAs that are eligible for RHF in FY 2006 are required to submit the required RHF Plan by October 1, 2005, or the first business day thereafter. PHAs must also send a PDF or word file on CD Rom, which contains a copy of the Second Increment RHF Plan and the development proposal(s) to the Office of Capital Improvements, attention William Thorson. Field Offices are to review and approve or disapprove the RHF Plans within 30 days. In order to request a second increment, those PHAs must submit a Second Increment RHF Plan, as outlined in paragraph 18(c), to the local HUD Field Office for review and approval.

The Second Increment RHF Plan must be received by the HUD Field Office no later than October 1 or the first business day thereafter. **If no RHF Plan is received by the deadline or the Plan is received after the deadline, that specific development will not be eligible for second increment RHF funding.**

- 3) **Field Office Review.** Field Offices are to review and approve or disapprove first and/or second increment RHF plans within 30 days of the application deadline. Field Offices are to notify the Office of Capital Improvements in Headquarters within 45 days of the application deadline of PHAs with approved second increment RHF Plans.
- 4) **Modifications to Previously Approved RHF Plans.** Modifications to first or second increment RHF Plans that were previously approved by HUD must be submitted to the local HUD Field Office on the date established in the timeline which will be posted on the PIH_OCI@HUD.GOV website. Field Offices have 30 days to review and approve or disapprove the PHA's RHF Plan.
- 5) **Approval/Disapproval.** HUD will review plans to determine if they meet the requirements of paragraph 24. If the Field Office finds that the RHF Plan meets the stated requirements, the Field Office approves the Plan. If not approved, the Field Office notifies the PHA of its deficiencies. PHA revision of the Plan deficiencies must be received within 60 days. If the RHF Plan is still not approvable, the obligation end date is 24 months from the date funds were made available for each year of the RHF funding. (See paragraph 18(e) below for more details.)

e. **Setting Obligation and Expenditure Commencement Dates for RHF Grants.**

In order for a PHA to accumulate RHF grants for several years and have a deadline for its RHF grant(s) that is later than 24 months from the date that the funds were made available, a PHA must have submitted and received approval of a RHF Plan from HUD. Where a RHF grant is not included in an approved RHF Plan, the PHA is not allowed to accumulate funds and 90 percent of the grant must be obligated within 24 months from when the funds are made available.

If the RHF Plan is submitted and approved by HUD as required, the obligation and expenditure start dates will be established **30 days from the date the PHA proposed to submit its development proposal** to the local HUD Field Office. The obligation start date is the basis for establishing the statutory obligation and expenditure deadlines.

For the second increment, the obligation start date is no later than the seventh year as noted above, and all funding (increments one and two) must be fully expended by the end of the tenth year of funding.

f. **Failure to Meet the First Increment Obligation Deadline**

For PHAs only developing the first five-year increment, all funds must be obligated within two years and expended within four years from the start date established in their HUD approved RHF Plan. If the PHA fails to meet the two-year obligation deadline for the development funded from the first five-year increment, the PHA will receive no further RHF funding for the second increment, and any grants provided for the second increment will be recaptured. For PHAs requesting a second increment of RHF funding, HUD will require as a condition for receiving grants in years 6-10,

notwithstanding any other requirement of this Notice, that all funding (increments one and two) be fully expended by the end of the tenth year of funding.

- 19. Capital Fund Financing Program (CFFP).** HUD has begun implementing the CFFP, which typically involves PHAs borrowing funds through direct loans from banks or through bond transactions, with security being provided through a pledge of future year Capital Funds, subject to the availability of Congressional Appropriations. Consistent with Section 30 of the Act and the ACC, written HUD approval from the Assistant Secretary for Public and Indian Housing is required before PHAs may enter into loan agreements or issue such bonds which encumber public housing projects (as defined above) or portions thereof, or pledge public housing assets as collateral. Failure to obtain written HUD approval may result in sanctions against PHA Executive Directors, employees, or their Boards and could also result in ineligible costs and other sanctions. The Office of Capital Improvements is available to provide technical assistance and additional information to PHAs.
- 20. Other Section 30 Actions.** Section 30 of the Act permits HUD to authorize a PHA to mortgage or grant a security interest in any public housing project or property. HUD can establish the terms and conditions in granting this authorization. Further, Section 7 of the ACC states that "...the HA shall not in any way encumber any such project, or portion thereof, without the prior approval of HUD." Consistent with Section 30 of the Act and Section 7 of the ACC, PHAs must request approval from the Assistant Secretary prior to encumbering public housing assets.
- 21. Emergency/Disaster Grants.** In FY 2005, Congress provided a set-aside of \$30 million under the Capital Fund for grants for emergencies and natural disasters **occurring in FY 2005**. The Department may only fund emergencies and/or natural disasters from funds made available by Congress in the Federal FY in which that emergency or natural disaster occurs. For example, if a hurricane damages a public housing project, on May 1, 2005, HUD may provide funding only from FY 2005 Appropriations. An emergency is a condition that is "sudden" and "unforeseen" and can only be funded from Appropriations in the FY in which the emergency occurs. In addition, HUD may only fund Capital Fund eligible work items from the set-aside.

All requests for funding for emergencies and natural disasters must be submitted within 90 days of the incident occurring, unless the Assistant Secretary grants an extension of the time frame based on extraordinary circumstances.

Requests must be fully documented. An independent third party must prepare all damage assessments and estimates. A copy of the insurance report must also be provided. The Department approves funding for these grants in the order that applications are determined approvable. An incomplete application lacking documentation to support a request will be returned unapproved.

- 22. Regulatory Requirements.** HUD plans to issue a Capital Fund Program regulation in the near future. Until a final rule is published, PHAs should proceed in accordance with 24 CFR Part 968 for modernization activities, except where newer statutory requirements are in place (e.g., amendments to the Act and various HUD Appropriations Acts). For example, PHAs must comply with 24-month

obligation and 48-month expenditure requirements of Section 9(j) of the Act and 24 CFR 905.120 of the regulation. In addition, all development activities must be processed in accordance with 24 CFR Part 941, which requires the submission of a Development Proposal (§941.304) and a Site Proposal (§941.303). Also, environmental reviews shall be completed by a responsible entity in accordance with 24CFR Part 58, except where HUD has determined, in accordance with §58.11, to complete the environmental review itself under 24CFR Part 50.

23. Paperwork Reduction. The information collection requirements 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 numbers 2577-0226 and 2577-0033. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

24. Office of Capital Improvements Web Site and Important Dates. To enhance communication with the public housing agencies the Office of Capital Improvements has established a website on the HUD.gov internet site. Please check the website to ensure that you have received the latest communications.

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

To enable the Office to send messages via email and direct mailing, PHAs must be responsible for maintaining an up-to-date email address and mailing address in the PIC system.

If you have any questions, please contact William C. Thorson, Director, Office of Capital Improvements, at (202)-708-1640, extension 4999 (this is not a toll-free number).

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

Attachment 1

Guidance for Moving to Work (MTW) Participants

The guidance in this Notice may not be applicable for some public housing agencies (PHAs) currently participating in the Moving to Work (MTW) Demonstration. MTW participants must consider the specific terms of their MTW Agreements regarding the following as it applies to their fiscal year (FY) 2005 Capital Fund grant(s).

Obligation and Expenditure Deadlines

MTW participants whose MTW Agreement does not waive them from the obligation and expenditure requirements must comply with the provisions of section 9(j) of the United States Housing Act of 1937 (the Act) and 24 CFR Section 905.120. PHAs that fail to comply with the obligation and expenditure deadlines as stated in the Act and regulations will incur penalties, which are described in paragraphs 11, 12 and 13 of this Notice. However, MTW participants whose Agreement provides a waiver of the obligation and expenditure deadlines are exempt from these requirements. Please take note of the applicability of the obligation and expenditure deadlines throughout this Notice.

Eligibility for Three Percent PHAS Bonus

There are currently 11 PHAs with MTW Agreements that exempt the PHAs from the Public Housing Assessment System (PHAS) but requires that they be entitled to any and all incentives, including bonus points which may be applicable to competitive proposals. As a result, these 11 MTW PHAs will automatically receive the three percent PHAS bonus in the FY 2005 Capital Fund. All other MTW participants will be eligible for the three percent PHAS bonus only if they are designated as a “High Performer.”

Relationship to PHA Plan Requirement

PHAs with MTW Agreements that exempt the PHAs from the Annual and Five-Year PHA Plan and instead require an MTW Annual Plan, are eligible for FY 2005 Capital Funds. These PHAs are not required to have a Capital Fund Five-Year Action Plan, but can obligate Capital Funds for any activity in its MTW Annual Plan. All other MTW participants must meet the requirements of paragraph 9 of this Notice.

Replacement Housing Factor (RHF) Funds

According to paragraph 18(d) of this Notice, PHAs that receive their RHF grants in FY 2005, and PHAs making modifications to previously approved first and/or second increment RHF Plans must submit their RHF Plans to the local HUD Field Office in accordance with the schedule identified in this Notice and on the website at: <http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm>. See paragraph 18(c) of this Notice for a description of the contents of first and second increment RHF Plans.

Attachment 1

A PHA that has received five years of RHF grants is eligible to receive a second increment of RHF Funding. As the Notice specifies, to receive second increment RHF funding a PHA must meet certain requirements for planning, leveraging, and compliance with obligation and expenditure deadlines. The PHA must submit a RHF Plan for the second Five-Year Increment to the HUD Field Office by date identified in the timeline posted on the website at: <http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm>.

The RHF Plans must detail how the PHA meets these requirements. See paragraph 18(a)(b) and (c) of this Notice for continued RHF Funding in addition to other information.

The attached chart details how each category of MTW PHAs can satisfy each of the three requirements to continue to receive RHF funding. For example, if a PHA is an MTW Plan and Report Agency (second column), for the first five-year increment of RHF funding, the PHA need not submit an RHF Plan, but must meet and report obligation and expenditure deadlines in required MTW Plans and Reports, and, make a request in writing for continued funding. The same PHA, for a second five-year increment of RHF funding, must follow the same procedures, but must, in addition, demonstrate leveraged funding for the second increment, equivalent to one-third of the total RHF funding received during the first increment, and make a letter request for a second five-year increment of RHF funding.

If a PHA is exempt from one or more of the required components by provisions of the PHA's MTW agreement, the PHA should request the continued RHF Funding in writing. The letter should detail the following: (1) how the PHA fulfills each of the three requirements, or (2) how and why the PHA is exempt from meeting particular requirements of the Notice, and (3) the date on which the PHA intends to submit a development proposal in accordance with 24 CFR Part 941. See paragraph 18(e) of this Notice for more information on setting obligation and expenditure start dates for RHF grants. This written request for continued first or second increment funding must be submitted to the Office of Capital Improvements by the date identified in the timeline which will be posted to the website at:

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

The written request should be sent to the address below with a copy to the local HUD Field Office:

William C. Thorson
U.S. Department of Housing and Urban Development,
Office of Capital Improvements,
451 Seventh Street, SW, Room 4146,
Washington, DC 20410.