

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

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**Notice:** PIH 2004-15 (HA)

**Special Attention of:**

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

**Issued:** August 9, 2004  
**Expires:** August 31, 2005

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

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**SUBJECT:** Fiscal Year 2004 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) 2004 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 2004 on January 23, 2004. The Act provided \$2,712,255,000 for the Capital Fund. A rescission provision in the Appropriations Act reduced that amount to 2,696,253,000.

The Act also contained a number of set-asides for items such as technical assistance, emergencies and natural disasters, working capital fund, and Neighborhood Networks. Note that Congress did not include a set-aside for timely obligators in the FY 2004 Appropriations Act.<sup>1</sup> The sum total of these statutory set-asides is \$170,101,000. The set-asides are identified in Table 1 on the following page. A total of approximately \$2,526,152,000 is available for the Capital Fund formula. An additional \$570,989 in recaptured funds is also available for redistribution to Public Housing Assessment System (PHAS) High Performers.

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

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<sup>1</sup> In FY 2002 and FY 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.

The table below shows the appropriated amount, the Congressionally mandated set-asides to be funded from the Capital Fund appropriation and the amount of funds for redistribution as of July 15, 2004.

**Table 1**

<b>Capital Fund Appropriation For Fiscal Year 2004</b>	
<b>Congressional Appropriation</b>	<b>\$2,712,255,000</b>
Appropriation Post-Rescission	\$2,696,253,000
Technical Assistance	\$ 49,705,000
Emergency/Disaster	\$ 39,764,000
ROSS	\$ 54,676,000
Working Capital Fund	\$ 10,547,000
Neighborhood Networks	\$ 14,912,000
Section 23 Lease Adjustment	\$ 497,000
<b>Total Set-asides Adjusted by Rescission</b>	<b>\$ 170,101,000</b>
Balance of 2004 Available- Post Rescission	<b>\$2,526,152,000</b>
Redistributions <sup>2</sup>	\$ 570,989
<b>Total Available for Capital Fund</b>	<b>\$2,526,722,989</b>

- 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 as follows: *“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 2004 Capital Fund formula was computed based on building and unit data under management in PIH Information Center (PIC) system (adjusted for demolition or disposition) as of **September 30, 2003**.

- 4. FY 2004 Capital Fund and Sanctions for Failure to Obligate in Accordance with the Statute.**

Section 9(j) of the United States Housing Act of 1937, as amended, (the Act) and 24 CFR Section 905.120 provides sanctions for PHAs that do not obligate in a timely manner. Specifically, HUD is to withhold its next Capital Fund grant until the PHA obligates 90 percent of its past due FY 2002 grant. If the PHA cures its obligation failure to comply during the year, HUD will release the new Capital Fund grant, but HUD is to impose a penalty by reducing the grant 1/12 for every month the PHA was in noncompliance. Although this requirement was established in 1998, the

<sup>2</sup> The amounts of redistributions identified in Table 1 are as of July 15, 2004. This amount varies from time to time increasing as funds are dereserved or deobligated and recaptured.

Department was delayed in implementing this provision by other requirements in the FYs 2002 and 2003 HUD Appropriations Acts.

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

For example, in FY 2002 any PHA whose fiscal year began in January or April was given an obligation start date not later than May 31, 2002. The XYZ Housing Authority received a \$10,000 Capital Fund grant in FY 2002. The FY 2002 grant had an obligation start of May 31, 2002 and obligation end date of May 30, 2004. The XYZ Housing Authority obligated \$8,000 or 80 percent of the FY 2002 grant by May 30, 2004.

<b>XYZ Housing Authority – FY 2002 Capital Fund</b>		
	\$ Obligated	% Obligated
Grant Amt Obligated - \$10,000		
Obligation Start Date – 5/31/02		
Obligation End Date - 5/30/04	\$8,000	80%
Compliance Date – 7/30/04	\$9,000	90%

The Housing Authority’s FY 2004 Capital Fund grant of \$12,000 would be withheld until the Housing Authority was in compliance on its FY 2002 grant. On July 30, 2004, two months after the obligation deadline for the FY 2002 grant, the XYZ Housing Authority reported in LOCCS that it obligated an additional \$1,000 of the FY 2002 grant bringing the cumulative obligation for the FY 2002 grant to \$9,000 or 90 percent of the grant.

The FY 2002 Capital Fund grant is now in compliance with Section 9(j) of the Act. The Department can release the XYZ Housing Authority's FY 2004 Capital Grant. As a penalty for slow obligation of its Capital Fund, the Department awards the XYZ Housing Authority a \$10,000 Capital Fund grant in FY 2004. Ten thousand dollars is the amount, which results, when you subtract \$2,000 (i.e., 2/12 of the grant) from \$12,000, the original amount of the FY 2004 grant.

XYZ Housing Authority – FY 2004 Capital Fund
Grant Amt Reserved - \$12,000
Grant Amt Obligated - \$10,000
(\$12,000 minus \$2000 (2/12 penalty) = \$10,000

- 5. Capital Fund Funding Sheets.** The Funding Sheets identify Capital Fund grants provided for FY 2004 including a formula grant, and where appropriate, first and/or a second increment RHF grants. In FY 2004, PHAs will have a funding sheet for each grant.

A. Formula Grant.

The primary grant identified is the PHA's annual formula allocation.

Components of the annual formula grant include:

- (1) The Capital Fund formula grant,
- (2) As applicable, the Public Housing Assessment System (PHAS) bonus of 3 percent for High Performers
- (3) High Performers Redistribution<sup>3</sup> of recaptured funds

B. RHF Grant - First Increment.

If the PHA is eligible for a first increment RHF grant, a separate Annual Contributions Contract (ACC) Amendment for the RHF grant will be provided.

C. RHF Grant - Second Increment.

If the PHA is eligible for a second increment RHF grant, a separate Annual Contributions Contract (ACC) Amendment for the RHF grant will be provided. Public and Indian Housing's Office of Capital Improvements website has a listing of PHAs that are eligible to apply for second increment RHF grants in FY 2004. The website is found at:

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

See paragraph 19 of this Notice for more information on RHF.

- 6. Data Errors.** Capital Fund grants are calculated based on data available at a certain point in time. HUD is not authorized by the FY 2004 Appropriations Act to make adjustments to prior year obligations with FY 2004 funds. As such, there will be no additional funding to correct data 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.

**7. FY 2004 Funding Package.**

In FY 2004 the Department **will not mail** the PHAs' Capital Fund funding packages via U.S. mail. The FY 2004 funding package will be available electronically on HUD.gov. See the link address below:

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

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<sup>3</sup> Section 9(j)(3)(C) of the Act includes a requirement to assign amounts not allocated (due to obligation failures) to PHAs that are designated as High Performers under section 6(j) of the Act (PHAS).

The Department is also sending each PHA an e-mail (based on PHA addresses in the PIC system) with the link to this website.

The PHA is to access the funding package via the internet and print it. The FY 2004 Capital Fund funding package will include the following: a letter to the executive director, a funding sheet for each grant, and an ACC Amendment for each grant.

8. **FY 2005 Capital Fund Formula.** PHAs must update their PIC data no later than, September 30, 2004, in anticipation of calculating the FY 2005 Capital Fund.
9. **Obligation and Expenditure Deadlines for FY 2004 Capital Fund Grants.** In FY 2004, HUD will make Capital Funds available to all PHAs at the same time and have a single commencement date for obligation and expenditure deadlines. This date will be reflected as the effective date on the ACC Amendment. The single commencement date enables PHAs to address unmet housing needs in a timely manner without delaying availability based upon the start of a PHA’s fiscal year.
10. **Timetable for Submission of FY 2004 ACC Amendments to HUD.** The following timeline will be followed to establish a single commencement date for ALL PHAs. The date on which HUD approves the PHA Plan does not effect the “single commencement date” for the purposes of obligating its FY 2004 Capital Fund grant.

**Table 2**

<b>Activity – Formula and RHF Grants</b>	<b>Action Date(s)</b>
HUD e-mails PHAs link to FY 2004 Capital Fund funding package at HUD.gov and posts to HUD’s website	August 5, 2004
Signed & dated ACC Amendments & amended PHA Annual Plan for FY 2004 <u>received</u> at HUD Field Office	No later than August 26, 2004
Field Offices Execute ACC Amendments <ul style="list-style-type: none"> <li>• Funds Available for obligation and expenditure for ALL PHAs<sup>4</sup> (obligation start date)</li> </ul>	September 7, 2004 September 7, 2004
Field Offices forward Data File and Certification to Headquarters	September 7, 2004
Headquarters forwards certification to CFO and obligates funds in PAS.	September 21, 2004
Field Offices spread PHA’s Budget Line Items (BLIs) in LOCCS	September 21 – October 4, 2004

11. **Capital Fund Approval Requirement.** The Act and the regulations, 24 CFR Part 903, require that a PHA prepare an annual and a five-year PHA Plan. The PHA Plan must include a description of how the PHA proposes to use its Capital Funds including its RHF grant funds. The FY 2004 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. In some instances, the PHA will have an approved Capital Fund Five-Year

<sup>4</sup> See paragraph 19 of this Notice for a discussion on obligation start dates of RHF grants.

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.

The Line of Credit Control System (LOCCS) has been programmed to automatically spread the budget among the BLIs referenced in Table 4 for all PHAs with an executed ACC in accordance with the percentages described in the following table. (See Table 4)

**Table 4**

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

BLI 0110 is an account established as a general location to put the balance of the funding. When a PHA reports obligation and expenditures, the items or activity must be entered 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 PHA's that have an approved FY 2004 Annual PHA Plan and budget, the Field Office can proceed to spread he approved budget in the LOCCS Web. PHAs may exercise fungibility between work items but will be required to reflect these work items in their FY 2004 Annual Plan submissions.

Since the Department anticipates using this approach in future years, PHAs should include as many work items in its 5-Year Action Plan as necessary, so that they will be able to proceed fully on approved work items when their Capital Fund grant is made available.

**12. Submission of the ACC Amendments.** PHAs must sign and date three ACC Amendments for each grant and send them to the local HUD Field Offices. (See paragraph 7 for a discussion of the FY 2004 Capital Fund 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 no later than August 26, 2004.

All HUD Field Offices (FOs) **must execute all FY 2004 Capital Fund ACC Amendments for formula grants<sup>5</sup> on September 7, 2004.** The FY 2004 funds are

<sup>5</sup> The start dates for a RHF grants are described in paragraph 19 of this Notice.

available for obligation by the PHA on, September 7, 2004, which is the commencement date for obligation and expenditure for all PHAs. The obligation deadline for the FY 2004 grants is September 6, 2006. The expenditure deadline for FY 2004 formula grants is September 5, 2008.

The Department will electronically obligate the FY 2004 Capital Funds through the Office of the Chief Financial Officer. FOs 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.

### **13. PHAs That Fail to Submit an ACC Amendment or 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 August 26, 2004. Any PHA, regardless of its intent, that does not submit a signed and dated FY 2004 Capital Fund ACC by August 26, 2004 will not receive its FY 2004 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.

### **14. Obligations Deadlines for FY 2002 and Extensions of Obligation Deadlines.**

Obligation deadline for FY 2002 grants. If your PHA,'s fiscal year began on January 1, or April 1, 2002, the obligation deadline for your FY 2002 Capital Fund grant is 24 months from the execution date of the ACC by the Field Office but no PHA should have an obligation deadline date later than May 30, 2004. If your PHA's fiscal year began on either July 1, or October 1, 2002, your PHA's obligation deadline is 24 months from the execution date of the ACC by the Field Office but no PHA should have an obligation deadline date later than June 30, 2004 or September 30, 2004 respectively.<sup>6</sup> If your PHA fails to obligate 90 percent of your Capital Fund grant by the respective deadline, it will be in noncompliance with the Act and the regulations. However, the Act and the regulations allow your agency to continue to obligate those grant funds past the deadline. The regulations impose penalties for failure to meet the obligation deadlines. See paragraph 4 of this Notice for a discussion of penalties for failure to meet obligation deadlines.

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 of this Notice for more discussion on MTW participants.)

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<sup>6</sup> As identified in the April 12, 2002, executive director letter, the obligation start dates for PHAs with fiscal year beginning January 2002 and April 2002 was the execution date of the ACC by the Field Office but not later than May 31, 2002. The obligation start dates for PHAs with fiscal year beginning July 2002 and October 2002 was the execution date of the ACC by the Field Office but not later than July 1, 2002 or October 1, 2002 respectively.

Requests for Extensions of the Obligation Deadline. Only the 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 the following:

- 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 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 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.

All requests, **regardless of fiscal year**, for extensions of the deadlines must be received in Headquarters **no later than 30 days prior to the obligation deadline** for the grant in question. Requests submitted after that date will be denied. Requests are to be submitted to William C. Thorson, Director, Office of Capital Improvements, 451 7<sup>th</sup> Street SW, Room 4146, Washington, DC 20410. 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 (202) 401-3997. All fax submissions must be followed by mailing a hard copy.

## **15. Expenditures Deadlines for FY 2000 - Recaptures and Extensions.**

Expenditure Deadline for FY 2000. The expenditure deadline date for Capital Funds awarded in FY 2000 is September 30, 2004. If PHAs fail to fully expend the Capital Fund grants by the deadline, HUD will immediately recapture any funds not obligated 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 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 of this Notice for more discussion on MTW participants.)

## **16. Monthly Obligation and Expenditure Reporting.**

PHAs must report cumulative obligation and expenditures monthly 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, eLOCCS will prevent drawdowns for all grants in those program areas. Furthermore, failure to report accurately and/or in a timely manner will effectively delay the Department providing the PHA with its FY 2004 grant once the PHA is in compliance with its obligation and expenditure requirements. Appeals of sanctions (e.g., withholding, grant reduction or recapture) will not be entertained where a PHA failed to accurately and/or timely report on obligations and expenditures.

## **17. Limitations on Encumbering Public Housing Projects.**

Note that 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. In addition, the HA shall not pledge as collateral for a loan, the assets of any project covered under this ACC.*” *Project is defined by the ACC to mean “public and Indian housing developed, acquired, or assisted by HUD under the Act, other than under section 8 of the Act, and the improvement of such housing. The term shall include all real and personal property, tangible and intangible, which is acquired or held by an HA in connection with a project covered under this ACC.”* Furthermore, Section 30 of the Act authorizes only the Secretary of HUD, or his duly delegated representatives, to approve transactions authorized under Section 30.

HUD has begun implementing the Capital Funds Financing Program, 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. Written HUD approval, from the Assistant Secretary for Public and Indian Housing, is required before PHAs may enter into such loan agreements or issue such bonds or otherwise encumber public housing projects (as defined above) or portions thereof, or pledge them 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 Improvement is available to provide technical assistance and additional information to PHAs.

## **18. Emergency/Disaster Grants.**

In FY 2004, Congress appropriated \$40 million for grants for emergencies and natural disasters under the Capital Fund. The post rescission amount available for emergencies and natural disasters is \$39,764,000.

The Department may only fund emergencies and/or natural disasters from funds made available by Congress in the Federal Fiscal Year in which that emergency or natural disaster occurs. For example, if a hurricane damages a public housing project, on May 1, 2003, HUD may provide funding only from FY 2003 Appropriations. All requests for funding for emergencies and natural disasters must be submitted within 90 days of the incident occurring.

Requests must be fully documented. An independent third party must prepare all damage 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.

## **19. 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 funding initially for a period of up to 5 years. A PHA may be given RHF funding if the PHA did not receive funding for public housing units under public housing development, Major Reconstruction of Obsolete Public Housing (MROP), HOPE VI or other programs that would otherwise provide replacement housing. RHF funding can only be used for replacement public housing.

A PHA may request funding for an additional 5 years if it will be leveraging substantial additional funding from sources other than public housing funds. A PHA seeking the additional funding must also have received its first five years of funding, 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.

All replacement housing must be undertaken in accordance with the public housing development regulations found at 24 CFR Part 941. All PHAs<sup>7</sup> must (1) submit an

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<sup>7</sup> Specific guidance on the applicability of the RHF Plan to Moving to Work participants is provided in Attachment 1 of this Notice.

RHF Plan, (2) submit a development proposal as described below and (3) proceed in accordance with their plan upon receiving the 5th year of funding. If the PHA requests an additional 5 years of funding, it must proceed with the development of the first 5-year increment and submit a plan for a second, discrete, development based on the second increment of funding provided in years 6 through 10.

In submitting its development proposal<sup>8</sup> pursuant to 24 CFR Part 941, PHAs 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 the same period.

Field Offices will be responsible for reviewing each development proposal, in accordance with Section 9(g)(3). The Public Housing Information Center (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 that is to be excluded from the Capital or Operating Fund formula.

## **B. RHF Grants Calculation Methodology.**

The amount of RHF funding a PHA receives each year is based on a number of factors including the:

1. number of units removed from the inventory;
2. project(s) associated with the removed units;
3. number of years the PHA has been receiving RHF funding.

Removing units from multiple projects in the inventory over time adds layers to the calculation. The following is a table giving an example for a hypothetical PHA receiving RHF. Table 5 shows project distribution on an annual basis. In Table 5, “1-1” signifies that the project is receiving the first year of 1<sup>st</sup> increment funding; “1-

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<sup>8</sup> 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 a required any time a PHA proposes to build or acquire new public housing units to add to the inventory.

2” signifies that the project is receiving funding for the second year of the first increment and so on.

**Table 5 - RHF Funding- by Project  
First Increment Only**

Project Name	1998	1999	2000	2001	2002
Project A	1-1	1-2	1-3	1-4	1-5
Project B		1-1	1-2	1-3	1-4
Project C			1-1	1-2	1-3

In the Table 5 above, as of FY 2002 Project A has received 5 years of first increment RHF funding (1-5); Project B has received 4 years of first increment funding (1-4); and Project C has received 3 years of first increment funding (1-3). Using the table above, the first increment RHF grant for the PHA in Fiscal Year 2002 was a combined total of RHF funds for the three developments, Projects A+ Project B+ Project C as identified in the last column.

Table 6 below shows the combined effect of both first and second increments. Project D qualifies for second increment funding in FY 2003 and Project E qualifies for second increment funding in FY 2004. Project F was not approved for second increment funding. Also note that in FY 2003 and FY 2004 the PHA could be receiving two RHF grants, a first increment grant of \$600 for Projects E and F and a second increment grant of \$500 for Project D. In FY 2005, the second increment grant will be \$730; a combination of the RHF amounts for Projects D and E. The PHA will not have a first increment grant in FY 2005

**Table 6 - RHF Funding-Multiple Tiers by Project for AJAX PHA  
First and Second Increment**

Project Name	1998	1999	2000	2001	2002	2003	2004	2005
Project D	<b>1-1</b> <b>\$500</b>	<b>1-2</b> <b>\$500</b>	<b>1-3</b> <b>\$ 525</b>	<b>1-4</b> <b>\$550</b>	<b>1-5</b> <b>\$580</b>	2-1 \$500	2-2 \$500	2-3 \$525
Project E		<b>1-1</b> <b>\$200</b>	<b>1-2</b> <b>\$210</b>	<b>1-3</b> <b>\$240</b>	<b>1-4</b> <b>\$300</b>	<b>1-5</b> <b>\$375</b>	2-1 \$200	2-2 \$205
Project F			<b>1-1</b> <b>\$100</b>	<b>1-2</b> <b>\$110</b>	<b>1-3</b> <b>\$125</b>	<b>1-4</b> <b>\$225</b>	<b>1-5</b> <b>\$100</b>	
Subtotal - 1 <sup>st</sup> Increment Grant	<b>\$500</b>	<b>\$700</b>	<b>\$835</b>	<b>\$900</b>	<b>\$1,005</b>	<b>\$600</b>	<b>\$100</b>	\$0
Subtotal - 2 <sup>nd</sup> Increment Grant	0	0	0	0	0	\$500	\$700	\$730
Total RHF Funding						\$1100	\$800	\$730

The shaded portion of the table identifies all of the PHA’s first increment grants. These should be included in the PHA’s RHF Plan for the first increment. In the example below, as the result of having multiple projects receiving RHF funding in different years the first increment spans from FYs 1998 -2004. The non-shaded portion of the table FY 2003-2005 is all of the PHA’s second increment grants that should be included in the RHF Plan for the second increment.

A table showing each PHAs RHF calculation for FY 2003 and FY 2004 is available electronically on HUD.gov internet. Public and Indian Housing's Office of Capital Improvements Web site can be found at:

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

### **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 as illustrated in Table 6. 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. Also note that descriptions of the PHA's proposals to use RHF funds should be contained in the PHA Plan. At a minimum the description shall include:

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

2) **Schedule.** A schedule of major development milestones (e.g., hire the architect, prepare plans and specifications, etc.), through and including the date the PHA plans to submit its development proposal to the HUD Field Office, and the Date of Full Availability (DOFA). The latest date that a PHA can submit a development proposal for a PHA's first 5 years 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 that year (the 5<sup>th</sup> year), whichever is later. The latest date that a PHA can submit a development proposal, for the second 5-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 7<sup>th</sup> year, whichever is later. However, a PHA may submit a development plan earlier.

Where a PHA is receiving RHF funds because of the demolition or disposition of more than one project, the RHF Plans (both first and second increments) must cover all the RHF grants for all of the projects. A PHA may be able to develop more than one development with the accumulation of funds from an increment. In some instances a PHA may want to combine the RHF funds from one or two projects to fund one new

development and use the remainder of the RHF funds from other projects to fund a second new development. The PHA will need a schedule in the RHF Plan that includes 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. For example in Table 7 below, if the PHA elects to develop a replacement project with the grant funds from Projects AA and BB, the development proposal for the first increment would be due in FY 2002, the fifth year of the first increment for Project AA. Project AA has been receiving RHF funding longer than Project BB. If the PHA proposes a second new development using first increment RHF grants from Projects CC and DD, the development proposal for the second new project is due FY 2004, the fifth year of RHF funding for project CC. Between the two projects receiving RHF funds to be used for the second new project, Project CC has been receiving RHF funding longer than Project DD.

**Table 7**

<b>Project</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>AA</b>	1-1	1-2	1-3	1-4	<b>1-5</b>	2-1	2-2	2-3	2-4	2-5	
<b>BB</b>		1-1	1-2	1-3	1-4	1-5	2-1	2-2	2-3	2-4	2-5
<b>CC</b>			1-1	1-2	1-3	1-4	<b>1-5</b>	2-1	2-2	2-3	2-4
<b>DD</b>				1-1	1-2	1-3	1-4	1-5	2-1	2-1	2-3

- 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 2<sup>nd</sup> 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 100 percent of the RHF funds towards payment of debt service. (For reference, HUD has typically permitted PHAs to pledge up to one-third of their annual Capital Fund grants for financing.) 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 5-year increment. For example, a PHA receiving \$105,000 in RHF funding in each of the first 5 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 5-year increment of RHF funds.*

*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 condition 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 2<sup>nd</sup> Increment Plans. Second Increment RHF plans must include a statement addressing: (1) the approval status of the 5-year PHA Plan and all annual plans (FY 1998 – FY 2004), and (2) compliance with obligation and expenditure deadlines in FY's 1998-2003.

#### **D. RHF Plan Submission.**

- 1) First RHF Funding Received in FY 2004. PHAs receiving their first RHF grants in FY 2004, must submit their RHF Plan to the HUD Field Office by October 21, 2004. Field Offices are to review and approve or disapprove the RHF Plans within 30 days.
- 2) First RHF Second Increment Plan Beginning in FY 2004. PHAs that began receiving RHF funding for the first time in FY 1999, may be eligible for a second increment beginning in FY 2004. In order to request a second increment, those PHAs must submit a Second Increment RHF Plan as outlined in paragraph 19(C).

The Second Increment RHF Plan must be received by the HUD Field Office no later than October 21, 2004. If no RHF Plan is received or the Plan is received after the deadline, it will be deemed ineligible. Field Offices are to review and approve or disapprove these 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.

Beginning in FY 2005 and there after, any PHA that is eligible for a second increment during in a particular fiscal year must submit an RHF Plan to the Field Office no later than October 1 of the fiscal year in which they become eligible. For example, a PHA that becomes eligible for a second increment of RHF funding for the first time in FY 2005, must submit an RHF Second Increment Plan to the HUD Field Office by October 1, 2004. If a PHA is eligible for second increment of RHF in FY 2006, the RHF Plan must be received by October 1, 2005.

- 3) **Modifications to Previously Approved RHF Plans.** Modifications to first or second increment RHF Plans that were previously approved must be submitted to the local HUD Field Office by October 21, 2004. Field Offices have 30 days to review and approve or disapprove of the PHA's RHF Plan.
- 4) **Approval/Disapproval.** HUD will review plans to determine if they meet the requirements of paragraph C above. If the Field Office finds that the RHF Plan meets the requirements of paragraph C above, the Field Office approves the Plan. If not, approved, the Field Office notifies the PHA of its deficiencies. PHA revision must be received within 60 days. If the RHF Plan is still not approvable, the obligation start date is 24 months from the date funds were made available for each year of the RHF funding. (See paragraph E below for more details.)

#### **E. Obligation and Expenditure Commencement Dates.**

For both the first and second increments, if a PHA fails to submit a RHF Plan as described in paragraphs C and D, the obligation start date of the RHF grant will automatically be 24 months from the date that the funds became available for each year of RHF funding. If the RHF Plan is submitted and approved 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 PHAs only developing the first 5-year increment, all funds must be obligated within 2 years and expended within 4 years from the start date established in their HUD approved RHF Plan. If the PHA fails to meet the 2-year obligation deadline for



the development funded from the first 5-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 10<sup>th</sup> year of funding.

**20. 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 statutory requirements prevail (e.g., amendments to the Act and various HUD FY 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. 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).

**21. 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.

**22. 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 web site on the HUD.gov internet site. Please check the website to ensure that you have received the latest communications. The Public and Indian Housing's Office of Capital Improvements Web site can be found at:

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

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

**Guidance for Moving to Work (MTW) Participants:**

The guidance in this Notice may not be applicable for some 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 FY 2004 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 Act and 24 CFR Section 905.120. PHAs that fail to comply with the obligation and expenditure deadlines as stated in the statute and regulations will incur penalties, which are described in paragraphs 4, 13,14 and 15 of the 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 3 Percent PHAS Bonus**

There are currently eleven 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 eleven MTW PHAs will automatically receive the 3 percent PHAS bonus in the FY 2004 Capital Fund. All other MTW participants will be eligible for the 3 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 2004 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 11 of this Notice.

**Replacement Housing Factor Funds**

According to paragraph 19(D), PHAs that receive their RHF grants in FY 2004, 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 by October 21, 2004. See paragraph 19(C) of the Notice for a description of the contents of first and second increment RHF Plans.

A PHA that has received 5 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 5-Year Increment to HUD Field Office by October 21, 2004. The RHF Plans must detail how the PHA meets the three requirements (See paragraph 19(a)) for continued RHF Funding in addition to other information.

The attached chart details how each category of MTW PHA can satisfy each of the three requirements to continue to receive RHF Funding. If a PHA is an MTW Plan and Report Agency (2<sup>nd</sup> 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 to the U.S. Department of Housing and Urban Development, Office of Capital Improvements, 451 Seventh Street, SW, Washington, Room 4146, DC 20410, with a copy to the HUD Field Office. The letter should detail how the PHA fulfills each of the three requirements, or how and why the PHA is exempt from meeting particular requirements of the Notice. This letter request should be submitted to the Office of Capital Improvements by October 21, 2004.

If you have any questions, please contact Mr. William C. Thorson, Director, Office of Capital Improvements at 202-708-1640 extension 4999.

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Michael Liu, Assistant Secretary  
For Public and Indian Housing

## RHF Funding Requirements for MTW PHAs

		MTW Plan & Report Agency with O&E waiver*	MTW Plan & Report Agency † without O&E waiver*	PHA Plan Agency with O&E waiver*	PHA Plan Agency without O&E waiver*
<b>1st 5-YEAR INCREMENT</b>	<b>P L A N N I N G</b>	MTW Plan meets planning requirement. RHF Plan not needed.	MTW Plan meets planning requirement. RHF Plan not needed.	Must submit RHF Plan as well as Annual PHA Plan	Must submit RHF Plan as well as Annual PHA Plan
	<b>O B L I G / E X P E N D</b>	NOT REQUIRED Compliance with O&E deadlines waived.	Must comply with Obligation & Expenditure deadlines	NOT REQUIRED Compliance with O&E deadlines waived.	Must comply with Obligation & Expenditure deadlines
	<b>L E V E R A G I N G</b>	<b>LEVERAGING Not Required for 1st 5-year Increment of RHF Funding</b>			

\*O&E waiver - PHA not required to comply with obligation & expenditure deadlines

† Reporting Waiver - PHA must meet O&E deadlines & must report in MTW Plans & Reports. Reporting in LOCCS is optional.

		MTW Plan & Report Agency with O&E waiver*	MTW Plan & Report Agency † without O&E waiver*	PHA Plan Agency with O&E waiver*	PHA Plan Agency without O&E waiver*
<b>2nd 5-YEAR INCREMENT</b>	<b>P L A N N I N G</b>	MTW Plan meets requirement for RHF Plan. RHF Plan not needed.	MTW Plan meets requirement for RHF Plan. RHF Plan not needed.	Must submit RHF Plan as well as Annual PHA Plan	Must submit RHF Plan as well as Annual PHA Plan
	<b>O B L I G / E X P E N D</b>	NOT REQUIRED Compliance with O&E deadlines waived.	Must comply with Obligation & Expenditure deadlines	NOT REQUIRED Compliance with O&E deadlines waived.	Must comply with Obligation & Expenditure deadlines
	<b>L E V E R A G I N G</b>	In funds committed for development, must show leveraging in the amount of at least one-third of the amount received for RHF Funding during the first 5-year increment.	In funds committed for development, must show leveraging in the amount of at least one-third of the amount received for RHF Funding during the first 5-year increment.	Must show leveraging in the amount of at least one-third of the amount received for RHF Funding during the first 5-year increment, for the planned RHF Project.	Must show leveraging in the amount of at least one-third of the amount received for RHF Funding during the first 5-year increment, for the planned RHF Project.

\*O&E waiver - PHA not required to comply with obligation & expenditure deadlines

† Reporting Waiver - PHA must meet O&E deadlines & must report in MTW Plans & Reports. Reporting in LOCCS is optional.

## Attachment 2

### Highlights of Important Dates

Action(s)	Significant Date(s)	Citation in Notice
1. Expenditure Deadline – FY 2000 Capital Fund Grants	9/30/04	Page 8, paragraph 15
2. FY 2004 Capital Fund Funding Packages on HUD.gov internet	8/05/04	Page 4, paragraph 7
3. Signed & dated ACC amendments & amended PHA Annual Plan for FY 2004 received at FO	No later Than 8/26/04	Page 5, Table 2 & Page 6 paragraph 12
4. PHAs Refusing Capital Fund or RHF Grants Notify FOs	No later Than 8/26/04	Page 7, paragraph 13
5. FOs Execute FY 2004 ACC amendments	9/7/04	Page 5, Table 2 & Page 6 paragraph 12
6. Obligation and Expenditure Start Date for FY 2004 Grants	9/7/04	Page 4 paragraph 7 & Page 6 paragraph 12
7. FOs send obligation data file & certification to Headquarters	9/7/04	Page 5, Table 2
8. CFO Obligates FY 2004 CF Grants	9/21/04	Page 5, Table 2
9. FOs Spread BLIs for FY 2004 CF Grants	9/21-10/04/04	Page 5, Table 2
10. FY 2002 Obligation End Dates	Varied	Page 7, paragraph 14
11. Request for Secretarial or DAS Extension of Obligation for FY 2002 Grants	30 days prior to obligation end date	Page 7, paragraph 14
12. PHA Deadline to Update PIC for FY 2005 Capital Fund Formula	9/30/04	Page 5, paragraph 8
13. PHAs Submit RHF Plans & FO Approval		Page 15, paragraph D
a. PHA submit RHF Plans (1 <sup>st</sup> & 2 <sup>nd</sup> increment) and Modifications to previously approved RHF Plans - 45 days after 9/6/04 ;	10/21/04	
b. MTWs send Letter on RHF to Headquarters	10/21/04	Attachment 1
c. FO review in 30 days	11/21/04	Page 15, paragraph D