

Capital Fund Recovery Competition (CFRC) NOFA
Frequently Asked Questions #2
As of June 4, 2009

*** Please note that page numbers referenced in this document correspond to the revised CFRC NOFA posted on June 3, 2009.

General

Q21: Now that the NOFA has been revised, can I still use the current application spreadsheet?

A21: No. HUD will be posting a revised application mid – to late next week that captures the NOFA changes and any problems that have been identified.

Q22: Are HA reserves considered public housing funds or non-public housing funds?

A22: HA reserves described as “operating receipts” in the Annual Contributions Contract (HUD-53012A 7/95) or as reserves as a result of operation of Public Housing under 24 CFR part 990 or cost savings remaining to a PHA in accordance with 24 CFR 990.185(a)(1)(ii) are considered public housing funds.

Q23: Are RHF funds considered public housing funds or non-public housing funds?

A23: RHF funds are part of Capital Funds provided in accordance with 24 CFR Part 905 and are considered public housing funds.

Q24: Is non-rental income (e.g., cell tower leasing fees) considered public housing funds?

A24: In accordance with section 9(l) of the 1937 Act, PHA income from non-rental sources as determined by the Secretary may be retained and used for 1937 Act housing purposes or to benefit the residents assisted by the PHA. This income is considered public housing funds.

Q25: Are COCC funds derived from management fees (e.g., under the Capital Fund Program) public housing funds?

A25: No. These funds are not considered program income and are non-public housing funds.

Q26: Can public housing proceeds from a disposition of public housing be used to meet leverage requirements?

A26: No. Additionally, the use of those proceeds is controlled by section 18 of the United States Housing Act of 1937 and is further described in the PHA’s Approval Letter from HUD concerning the disposition.

Q27: Does the NOFA tell me what the review and selection process will entail?

A27: Yes. All applicants must carefully read Section V.B, "Review and Selection Process," of the NOFA which provides the criteria on how CFRC applications will be reviewed and selected for funding. Please note that there are two separate, different review and selection processes for Threshold-Based applications (Categories 1, 2 and 3) and Rated and Ranked applications (Category 4).

Q28: If my PHA is designated as troubled should I apply?

A28: PHAs must make their own determination about whether or not to apply. However, applicants that are designated as Troubled should review the Troubled Status under the eligibility criteria of the NOFA (Section III.A.3, page 25 of the revised CFRC NOFA) in order to determine how their situation applies under Section III.A.3.a or III.A.3.b. Section III.A.3 states:

"3. Troubled Status. *As of the NOFA publication date (date posted to HUD's website [May 7, 2009]), if HUD has designated your PHA as troubled, HUD will use documents and information available to it to determine whether you qualify as an eligible applicant. If designated as troubled, you may still be an eligible applicant if:*

a. The PHA is in receivership, either in HUD's possession or judicial receivership, and a private housing management agent has been selected (in accordance with 24 CFR part 902), or a receiver has been appointed and HUD determines the PHA to be capable of carrying out this grant program; or

b. The PHA is designated as troubled principally for reasons that will not affect its capacity to carry out this grant program and HUD determines the PHA to be capable of carrying out this grant program."

Please note that in both a. and b., HUD makes the final determination of whether the PHA is capable of carrying out the proposed grant program.

Q28: Some PHAs do not have scanners and or the software to convert the SF424 or the SFLLL forms to .pdf files, how can they comply with the NOFA requirement to submit .pdf files?

A28: Many if not most modern Multifunction Printers (sometimes referred to as "All in One" printers) will scan documents and include software that will automatically convert scanned documents to Portable Document Format (PDF) files. Multifunction printers suitable for small office use can be purchased for \$200 to \$300 either at office supply stores or on the Web. PHAs should be able to purchase such equipment using Central Office Cost Center funding. Alternatively, PHAs could turn to local libraries and/or retail stores that provide printing, copying, scanning, and other related services.

Q29: What documentation needs to be submitted with a TDC and/or and HCC waiver request?

A29: As noted in the revised NOFA under Category 1 (pages 41 and 47), Category 2 (pages 54 and 57), Category 3 (pages 62 and 66), and Category 4 (pages 71 and 93) respectively, the Department will allow waivers of Total Development Costs (TDC) and the Housing Construction Costs (HCC) for

Capital Fund grant purposes. The TDC and/or HCC waiver request must include 1) the amount requested for approval as documented on the Total Development Cost (TDC) Limit and Housing Construction Cost (HCC) Limit Calculations form and 2) the certifications and documentation as noted below under each waiver request category:

Extraordinary site costs can be excluded from the TDC and/or HCC calculation. Examples of such costs include, but are not limited to, removal or replacement of extensive underground utility systems, extensive rock and/or soil removal and replacement, construction of extensive street and other public improvements, dealing with unusual site conditions such as slopes, terraces, water catchments, lakes, etc., environmental remediation measures and dealing with flood plain and other environmentally corrective issues. Submission requirements include the waiver request described above, a letter describing the required site remediation and/or extraordinary site costs, certified by an independent licensed engineer, and including a cost estimate detailing quantities and costs of the extraordinary site or environmental measures.

Extraordinary green/energy costs can be excluded from the TDC and/or HCC calculation. Examples of such costs include, but are not limited to the added cost to comply with energy standards or green building criteria. Submission requirements include the waiver request letter described above, a cost estimate detailing the additional energy costs required in order to meet higher standards of energy and water consumption savings and a letter describing the extraordinary green/energy costs as compared to the usual development costs, verified by an independent licensed engineer or architect certified by one of the following associations that specialize in green and energy efficient development standards: Leadership in Energy and Environmental Design (LEEDs), Certified Energy Manager (CEM), Association of Energy Engineers (AEE), American Society in Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), Residential Energy Services Network (RESNET) Home Energy Rating System (HERS), Building Performance Institute (BPI).

Extraordinary development costs created by but not limited to the following causes, failure of the PHA to obtain tax credits after submission of an application to the state housing finance agency, failure of the PHA to raise the anticipated equity from investors for each dollar of credit allocation, loss of the PHA's tax credit investor, the loss of anticipated grant monies from the city, state or anticipated partner that was targeted to the PHA's development project or an increase in the cost of local construction. Submission requirements include the waiver request letter described above including the cause of the request certified by the PHA, and including supporting documentation and/or letters from the appropriate agency or potential partners.

NOFA Category 1

Q1: For Category 1, it appears that new construction is not an option. It offers only the “modification” of units and requires that we input the unit information itself. Does this mean that there is not an option to apply for funding new construction of any rental property under Category 1?

A1: Yes. Category 1, Improvements Addressing the Needs of the Elderly and/or Persons with Disabilities (see section V.A.1, page 38, of the revised NOFA), does not allow for the construction of actual dwelling units. However, Activity 4 under Category 1 does allow for, “Improvements to or construction of non-dwelling areas to provide additional space for supportive services targeted to the elderly and/or or persons with disabilities.” As stated in Section V.A.1.a, funds in Category 1 “may be used to pay for any eligible Capital Fund expenses, including substantial rehabilitation, acquisition and construction, as defined in 24 CFR Parts 905, 941 and 968, *that help achieve the Category objective of addressing the needs of the elderly and/or persons with disabilities through improvements to public housing units and/or community facilities, specifically the following activity types:*

- (1) Modifications to dwelling units to make them fully accessible in accordance with the Uniform Federal Accessibility Standards (UFAS).
- (2) Conversion of dwelling units to provide space for service providers targeted to the elderly and/or persons with disabilities.
- (3) Improvements to non-dwelling areas to make them accessible and ADA-compliant.
- (4) Improvements to or construction of non-dwelling areas to provide additional space for supportive services targeted to the elderly and/or persons with disabilities.

NOFA Category 2

Q2: Under Public Housing Transformation, can you do relocation and demolition only?

A2: No. There are more activities eligible under Category 2 than just relocation and demolition. See the NOFA Section V.A.2.a. It is as follows:

“a. Eligible Activities. Funds in this Category may be used to pay for any eligible Capital Fund expenses, as defined in 24 CFR Parts 905, 941 and 968, that help achieve the Category objective of redeveloping public housing that is distressed and a blighting influence on the surrounding community. The surrounding community must be either a stable and well functioning community, or one that lacks resources but has already been targeted for revitalization by localities.”

(1) Development activities (24 CFR Part 941).

(2) Rehabilitation activities including the design and construction of public housing units, including 24 CFR Parts 905 and 968.

(3) The redevelopment activity may include demolition/disposition or renovation of existing public housing units. However, HUD believes that there should be a reasonable amount of replacement housing for units that are demolished or disposed of. See Category Specific Threshold Requirements below, Section V.A.2.b(2)(i), for a threshold requirement related to replacement housing.

(4) Relocation for residents displaced as a result of construction, rehabilitation, or Acquisition activities described above, including reasonable moving expenses, as well as relocation counseling and other services to help residents relocate;”

Q3: If you do relocation and demolition, is there a 1 for 1 replacement unit requirement?

A3: If an applicant applies for Category 2, one of the threshold requirements they must meet concerns replacement:

“(i) HUD believes that there should be a reasonable amount of replacement housing for units that are demolished or disposed of. Applicants under this category must certify that, if funded, they will build a number of public housing units that is equivalent to the total grant amount divided by the applicable Total Development Cost (TDC) limit (i.e. if the grant is \$10 million and the TDC limit is \$100,000 per unit, the recipient PHA would have to build at least 100 public housing units). Applicants must indicate in their application what this number would be. For the purposes of establishing the targeted number of units, the Department will calculate the number of units to be replaced without any adjustments for demolition costs or TDC waivers even if those apply to the grant in question (i.e. even if the Department waives the TDC to permit an increase from \$100,000 per unit to \$115,000 per unit for the grant, the recipient would still have to produce the number of units based on the unadjusted \$100,000 TDC).”

This threshold means that applicants cannot only do relocation and demolition for Category 2.

Q4: What data will HUD rely upon in assessing whether a proposed project is located in a "census tract with a concentration of poverty that does not exceed 40 percent"? Will it be 2000 Census data, 1990 Census data or something more recent?

A4: HUD uses the 2000 Census data.

Q5: What information PHAs should use in determining the relevant poverty levels?

A5: The poverty line is related to the cost of a certain "basket of goods" adjusted by household size. It is the same for every place in the US and is updated each year by Census and can be found at (<http://www.census.gov/hhes/www/poverty/poverty.html>)

Q6: The PHA would like to demolish a distressed public housing property in poverty-impacted census tract, and redevelop a new public housing property in a non-poverty-impacted tract. Is this permitted?

A6: Yes. Under Category 2 - Public Housing Transformation. B.2.h *The units proposed to be completed as a result of this grant must be located in a census tract (using data from the 2000 Census) with a concentration of poverty that does not exceed 40 percent.*

NOFA Category 3

Q2: Can you clarify what “stalled” means in terms of Category 3, “Gap Financing for Projects that are stalled due to Financing Issues”?

A2: As you know, the purpose of Category 3 (as stated in Section V.A.3, page 58 of the revised NOFA) is *“to provide funding to positively impact the availability of affordable rental housing by filling the capital investment gap for redevelopment or replacement housing projects which are ready to proceed but are stalled due to the inability to obtain anticipated private capital.”*

This purpose is reflected in the following Category Specific Threshold Requirement (Section V.A.3, (p 60): *“(b) Projects must be those for which the applicant had obtained commitments from sources of private financing, including Low Income Housing Tax Credits (LIHTC) or volume bond cap allocations, but the financing commitments have been withdrawn or the applicant has been unable to obtain the necessary financing to fully fund the proposed activity (due to the prohibition against supplanting, the cause for the withdrawal or insufficiency may not be related to the PHA’s receipt of Recovery Act funds).”*

Thus, “stalled” means that the applicant had obtained commitments from sources of private financing, but those financing commitments have been withdrawn or the applicant has been unable to obtain the necessary financing to fully fund the proposed activity.

NOFA Category 4

Q4: I know the “Federal Cost Standards” as referenced in HUD’s procurement handbook 7460.8Rev2, but I am not aware of the “HUD’s Cost Control and Safe Harbor Standards.” Where can I find them?

A4: Please see the following link for HUD’s “Cost Controls and Safe Harbor Standards”:
http://www.hud.gov/utilities/intercept.cfm?/offices/pih/programs/ph/hope6/grants/admin/safe_harbor.pdf

Q5: How would Category 4, Energy Savings, coordinate with an Energy Performance Contract (EPC)?
Can these funds be used in an EPC?

A5: Recovery Act funds can be used in cooperation with an EPC. To maximize the benefits of Recovery Act Funds with an EPC, the PHA should consider using Recovery Act Capital Funds for slow or neutral payback improvements such as utility distribution systems, protective enclosures to house energy systems or building envelope improvements. Utility savings generated from the measures funded by Recovery Act Capital Funds may be not included in the cash flow savings used to amortize the debt to third party financing in an EPC.

EPCs should be used for items that will generate sufficient savings to amortize the debt associated with third party financing. HUD incentives under an EPC will be applied only to the amount that is financed by a third party (e.g., ESCO or bank).

Q6: Can an Energy Performance Contract project that is not listed in the 5-year plan that is ready to be implemented in 120 days be awarded a grant?

A6: PHAs with an approved Request for Procurement/Qualifications (RFP/Q) or further along in the EPC process, may use Recovery Act Capital Funds cooperatively with an EPC. The PHA in its revision to the Five-Year Capital Fund Plan must demonstrate the need for the use of HUD funds in addition to the third party financing of the EPC. An amendment to the 5-year plan would have to be processed through the PHA’s local HUD Field Office.

Q7: Can a PHA use Recovery Act Funds with an existing EPC and will they be required to re-procure?

A7: No. For agencies which have already procured energy performance contractors, no additional procurement is required to enable the contractor to perform the work using Recovery Act Capital Funds for a scope of work integral to the energy performance contract, provided those energy improvement activities were in the original contract and provided that other funds were not obligated for that purpose and the procurement meets the Recovery Act procurement requirements (see PIH Notice 2009-12).

However, in a situation in which a PHA has an approved EPC contract, but wishes to add an energy infrastructure improvement, e.g. replacing its gas piping distribution system, the PHA must first determine pursuant to 24 CFR 85.36(d)(4) whether a contract for the additional item (gas piping) is

infeasible under small purchase procedures, sealed bids or competitive proposals. Then, if infeasible under these competitive methods, the PHA must determine whether this additional item is available only from a single source or is there a public “exigency” or emergency for this work which will not permit a delay resulting from competitive solicitation. These determinations must be recorded in the PHA’s procurement files. The source of funds (if Recovery Act Capital Funds) can be the reason for the expediency determination.

Q8: In Category 4, Option 1, what is considered to be substantial rehabilitation?

A8: As per 24 CFR § 8.23 (a), substantial rehabilitation is considered to be alterations that cost 75 percent or more of the replacement cost (TDC) of the completed unit.

Q9: In the Category 4, Energy Efficient Green Community, is there a per unit cost limitation applicable to Option 2 (Moderate Rehab) other than the TDC limitation?

A9: As per the definition of substantial rehabilitation above, moderate rehabilitation is considered to be alterations that cost less than 75 percent of the replacement cost (TDC) of the unit.

Q10: Can Category 4 funding be used for a new Public Housing development or does it only apply to rehab of existing developments?

A10: Yes. Category 4, Option 1 funds are available for new construction as described on page 67 of the revised NOFA. Option 1 funding is available for new construction OR substantial rehabilitation.

Q11: Are applications for solar panels an acceptable energy and green improvements?

A11: As described on page 67 and 68 of the revised NOFA under the description of Option 1, solar panels are considered a renewable energy resource and are eligible for funding. On page 68 of the revised NOFA it is stated that Option 2 provides funding for the creation of energy efficient, green communities through moderate rehabilitation. The installation of solar panels is a strategy that would fulfill this goal.

Q12: What do we do if one of the energy system components we plan to use is not made in the USA?

A12: As long as the system is assembled in the USA, it is considered meet the made in the USA requirement.

Q13: Is the Green Operations and Maintenance practices that we have to adopt a fixed document?

A13: As noted in category 4, Option 2, rating Factor 1 on page 84 of the revised NOFA the Green Operations and Maintenance practices has 5 components, i through v. (i) Requires that a manual be developed that includes a routine maintenance plan; operations and maintenance guidance for all appliances, HVAC operation, water-system turnoffs, lighting equipment, paving materials and landscaping, and other systems that are part of each occupancy unit; and occupancy turn over plan that describes in detail the process of educating the resident about proper use and maintenance of

all building systems. This manual is a fixed document as are (iii) the Integrated Pest Management Protocols and (v) the green assessment of facilities.

Q14: How do we document the Green Criteria Rating Factor regarding the percentage of savings in energy/water consumption?

A14: As noted in the Category 4, Option 2, Rating Factor 2, Strategy for Energy Efficient Communities (pages 86 and 87 of the revised NOFA) and the Program Requirements for Category 4, page 116, a PHA must substantiate a savings in energy consumption of the project that is the subject of the application by converting all energy sources to a common unit, the British Thermal Unit (BTU). The savings will be verified through an established baseline developed upon an independent energy audit and a post retrofit energy audit. Savings in water consumption will be verified through a baseline established through pre retrofit consumption documentation and post retrofit consumption measured in gallons as certified by the local water utility company.

Q15: If a Category 4, Option 2 project is getting savings in consumption from both water and energy use, how is this expressed for the purposes of the NOFA application?

A15: If the PHA will realize savings in both energy and water consumption then the percentage of the savings in energy and water consumption is expressed as an aggregate of the energy and water consumption savings e.g. 40% savings in water consumption and 35% savings in energy consumption = 37.5% savings $(.4+.35=.75 \text{ divided by } 2 = 37.5\%)$.

Q16: Do the savings described in Category 4, Option 2, Rating Factor 2, Strategy for Energy Efficient Communities apply to the entire HA consumption?

A16: No. The savings in energy and/or water consumption apply only to the project that is the subject of the application for Option 2, moderate rehabilitation for energy efficiency.