



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Public and Indian Housing

Special Attention of:

Regional and Field Office Directors of
Public Housing
Public Housing Agencies
Regional Administrators
Responsible Entities

Notice PIH 2016-18 (HA)

Issued: November 14, 2016
This notice remains in effect until
amended, superseded or rescinded.

Cross Reference: PIH Notice 2011-
55 “Public Housing Operating
Subsidy Calculations for Calendar
Year 2012;” PIH Notice 2012-2,
“Guidance on Public Housing
Operating Funds;” 24 CFR parts
905 and 990

SUBJECT: Guidance on Full Flexibility for Eligible Small PHAs

1. Purpose. This notice provides guidance on the “full flexibility” of Capital Funds (capital funds) and Operating Funds (operating funds) for public housing agencies (“PHAs”) which own or operate less than 250 public housing units (“small PHAs”) and meet other requirements. The full flexibility articulated in this notice allows eligible small PHAs to undertake larger project improvements with capital or operating funds while promoting local discretion in prioritizing capital and operational needs.

2. Background. The Quality Housing and Work Responsibility Act of 1998 (QHWRA) added Section 9(g)(2) to the United States Housing Act of 1937 (“1937 Act”)(codified at 42 U.S.C. 1437g(2)), along with significant reforms to HUD assistance. QHWRA established capital funds and operating funds at Sections 9(d) and 9(e) of the 1937 Act, respectively, replacing previous funding vehicles.

The Capital Fund Program (CFP), as described in Section 9(d), provides assistance to PHAs for capital and management activities, including the development, financing, and modernization of public housing; deferred maintenance; and management improvements. CFP regulations are found at 24 CFR part 905.

The Operating Fund Program (OFP), as described in Section 9(e), provides assistance to PHAs for the operation and management of public housing, including procedures and systems to

maintain and ensure efficient management; routine preventative maintenance; energy costs associated with public housing; and the costs of repaying (together with rent contributions) debt incurred to finance the rehabilitation and development of public housing units. OFP regulations are found at 24 CFR part 990.

Section 9(g)(2) of the 1937 Act (“Full Flexibility for Small PHAs”), permits any PHA that owns or operates less than 250 public housing units, is not designated as a troubled agency, and is, in the determination of the Secretary, operating and maintaining its public housing in a safe, clean, and healthy condition, to use its operating and capital funds flexibly to fund any eligible activities under either funding stream, regardless of the fund from which the amounts were allocated and provided.

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) amended the 1937 Act to allow all PHAs, including PHAs owning or operating 250 or more units, to use up to 20 percent of their operating fund allocations for activities that are eligible under CFP. HOTMA also authorizes PHAs to establish a Replacement Reserve to fund CFP activities. Amendments under HOTMA will be addressed and implemented in future guidance and regulations.

3. Applicability. This guidance applies to any PHA that owns or operates less than 250 public housing dwelling units and is not designated as a troubled PHA, pursuant to section 6(j)(2) of the 1937 Act. PHAs meeting this standard are referred to as “eligible small PHAs” throughout this notice.

For the purposes of this notice, “public housing dwelling units” refers to public housing units under an Annual Contributions Contract with HUD (“ACC Units”). Dwelling units temporarily used for non-dwelling purposes (e.g., units in Non-Dwelling and Non-Dwelling Special Use occupancy statuses in HUD systems) are counted as public housing dwelling units.

PHAs achieving an overall score under the Public Housing Assessment System (PHAS) of less than 60 percent are designated as troubled and referred to as “Overall Troubled.” PHAs receiving less than 50 percent under the CFP indicator of PHAS are also designated as troubled and referred to as “Capital Fund Troubled.” Small PHAs designated as Overall Troubled, Capital Fund Troubled, or both, are ineligible for the flexibilities described in this notice. PHAs achieving an overall score under the Section Eight Management Assessment Program (SEMAP) of less than 60% are designated as troubled and referred to as “SEMAP Troubled.” PHAs that are only SEMAP Troubled are not excluded from exercising full flexibility.

Eligible small PHAs may use operating funds and capital funds as outlined by sections 9(d), 9(e), 9(g), and 9(l) of the 1937 Act, HUD regulations and notices. Moving to Work agencies have flexibilities in accordance with their Moving to Work agreements.

4. Capital Funds for Operating Expenditures. 24 CFR 905.314(1)(2) allows eligible small PHAs to use up to 100% of a CFP grant for OFP activities if the PHA does not have debt service payments, significant capital needs or emergency needs. For eligible small PHAs, transfers of capital funds are enacted through the assignment of funds to budget line item (BLI) 1406-Operations in HUD’s Line of Credit Control System (LOCCS).

Debt service payments include any annual contributions pledged for payment of bonds or notes through the Capital Fund Financing Program (CFFP). PHAs with any such obligations are ineligible to exercise full flexibility of capital and operating funds.

Regulations require eligible small PHAs to plan and budget for significant CFP needs prior to using capital funds for operating fund expenditures, pursuant to submission requirements at 24 CFR 905.300. Eligible small PHAs seeking to exercise full flexibility must have an approved CFP 5-Year Action Plan (Form HUD-50075.2) that indicates the amount of each grant they intend to use for operating fund expenditures. In addition, eligible small PHAs seeking to exercise full flexibility must submit a capital fund budget (Form HUD-50075.1 and formerly referred to as an Annual Statement) for each year, including as a work item the transfer of capital funds to operations for any applicable years.

Consistent with 24 CFR 905.300(b)(1)(i), except in the case of emergency/disaster work, the PHA cannot use capital funds on any work that is not included in a HUD-approved CFP 5-Year Action Plan and its amendments. If, during a field office review, HUD determines an eligible small PHA has significant immediate capital needs (such as replacement of roof, HVAC, plumbing or sewer, kitchen or bathroom fixtures), or any work that requires a significant investment of capital funds where deferment is likely to result in an emergency situation if not addressed immediately, or extending the useful life of a system is no longer cost effective, then that PHA is ineligible to exercise full flexibility. Prior to using capital funds for eligible operating fund activities, PHAs must comply with any applicable requirements for an environmental determination by a responsible entity under 24 CFR part 50 or by HUD under 24 CFR part 58.

HUD uses various assessments to determine whether a PHA has significant capital needs, including, but not limited to, REAC Physical Assessment Sub-System (PASS) scores, site visits, and comparisons of PHA spending and performance relative to regional levels. If HUD determines the PHA has significant capital needs and is ineligible to exercise full flexibility under Section 9(g)(2) of the 1937 Act, the PHA must submit a revised 5-Year Action Plan.

Eligible small PHAs must complete a thorough assessment of their capital needs prior to completing the 5-Year Action Plan and accurately reflect those needs in the capital fund submission.

For eligible small PHAs, transfers of capital funds are enacted through the assignment of funds to BLI 1406 in LOCCS and are vouchered in order to be considered obligated for capital fund purposes. Once funds are vouchered and disbursed from LOCCS, they are considered obligated and expended for capital fund purposes, effectively becoming operating funds, and may be used for any eligible expenditures under 24 CFR part 990, including eligible capital fund expenditures per Section 9(g) of the 1937 Act.

Small PHAs ineligible to exercise full flexibility under Section 9(g)(2) are subject to the 20% limitation on transfers of capital funds to operations described at Section 9(g)(1). However, note

that the limitation in Section 9(g)(1) of the 1937 Act is increased to 25% for CFP assistance provided through Federal Fiscal Years (FFYs) 2015 and 2016 capital fund grant awards only, as detailed in the second paragraph of the FFY 2015 and FFY 2016 CFP ACC Amendments.¹

For FFYs 2015 and 2016 CFP awards, the Secretary may waive the percentage limitation in section 9(g)(1) to allow certain PHAs to use capital funds for anticrime and antidrug activities as defined in section 9(e)(1)(C) of the 1937 Act, including the costs of providing adequate security for public housing residents, as well as above-baseline police service agreements. Small PHAs ineligible to exercise full flexibility that wish to transfer more than 25% of FFY 2015 or FFY 2016 capital funds to operating funds for anticrime and antidrug activities can submit a waiver request to the local HUD field office. The field office reviews and transmits a recommendation on the waiver request to HUD headquarters. Waiver requests are granted at HUD's discretion and for good cause. Good cause determinations are made on a case-by-case basis dependent upon the adequacy of the PHA-provided justification.

PHAs seeking a waiver to use capital funds for anticrime and antidrug activities above the 25% limitation must apply those funds to operating fund-eligible activities (e.g., costs for security guards or ongoing security services.) A waiver request is not necessary for activities which are capital fund-eligible (e.g., installation of lighting, fencing or cameras or training of in-house security staff.) For example, a waiver justified by a PHA's need to install security cameras is unnecessary because the PHA does not need to transfer capital funds to operations to undertake this work. A PHA waiver request to transfer capital funds to operations in order to pay security staff salaries to monitor installed cameras, depending on the circumstances, may be justifiable to address tenant protection needs.

No transfer or expenditure of capital funds on operating fund-eligible work items is permitted unless the transfer of funds is included in a HUD-approved CFP 5-Year Action Plan.

5. Operating Funds for Capital Expenses. Eligible small PHAs may exercise full flexibility to use operating funds for eligible CFP activities. The eligible use authority for operating funds extends to operating receipts as defined in Section 2 of the ACC (including excess cash balances as provided under 24 CFR 990.280(b)(5)). Eligible uses of excess cash are described in 24 CFR 990.280(b)(5) and the supplement to the Financial Management Handbook (7475.1 Rev CHG-1). When defined sources of excess cash further restrict the use of those funds, the more restrictive criteria apply.

PHAs may not spend operating funds for CFP activities unless such funds are included in an approved CFP 5-Year Action Plan and budget submitted to HUD. HUD anticipates shifting from paper submission of CFP 5-Year Action Plans and budgets to an automated submission through the upcoming Energy Performance and Information Center (EPIC). PHAs completing

¹ The Consolidated and Further Continuing Appropriations Act of 2015 increased the limitation in section 9(g)(1) of the 1937 Act to 25 percent for Fiscal Year 2015 Capital Funds. This language was retained in the Consolidated Appropriations Act of 2016.

the current, paper-based submission process identify the amount of operating funds or excess cash on line L of the 5-Year Action Plan and on line 1 of the budget/annual statement in accordance with instructions on non-CFP funds. Automated submissions in EPIC will have forthcoming guidance to record operating funds or excess cash in their CFP 5-Year Action Plans and budgets. Prior to using operating funds or operating reserves (including excess cash) for eligible capital fund activities, PHAs must comply with environmental requirements for approval.

6. Financial Data Schedule (FDS) and Low Income Statement Reporting. In order to account for capital expenditures funded with operating funds and operating reserves (including excess cash), PHAs must enter the project's annual financial report into the Financial Assessment Subsystem (FASS) using the memo accounts noted below. These FDS line items are completed when the project incurs capital costs funded with non-capital fund related monies available under the project's and COCC's income statement (both the CFP and Low Rent Public Housing income statement).

- FDS Line 11610 (Land Purchases): capitalized costs incurred during the current fiscal year related to the purchase of land and related costs to prepare the land for use. Land purchases include the purchase price and the costs needed to prepare the land for its intended use. These additional costs typically include fees for an attorney, title search, clearing, filing, drainage, and the cost of removing buildings that are needed to prepare the land for its intended use. Note that any land purchases are subject to approval by HUD under 24 CFR part 905 development requirements.
- FDS Line 11620 (Building Purchases): capitalized costs incurred during the current fiscal year for buildings and related building improvement projects. Construction in progress costs related to a building or improvement project are also reflected on this line.
- FDS Line 11630 (Furniture and Equipment – Dwelling Purchases): capitalized costs incurred during the current fiscal year for purchases of furniture and equipment dwelling units that were capitalized, including costs of movable furniture, equipment, and machinery placed in the dwelling unit or common area.
- FDS Line 11640 (Furniture and Equipment – Administrative Purchases): capitalized costs incurred during the current fiscal year of movable furniture, equipment, and machinery used in the administration, maintenance, and other functions (i.e. protective services) of the PHA.
- FDS Line 11650 (Leasehold Improvement Purchases): capitalized costs incurred during the current fiscal year on leased property, such as additions, alterations, remodeling or renovations. Construction in progress costs related to a leasehold improvement project are also be reflected on this line.
- FDS Line 11660 (Infrastructure Purchases): capitalized costs incurred during the current fiscal year includes long-lived capital assets that normally are stationary in nature and

normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure assets include parking lots, drainage systems, lighting systems, water and sewer systems. Construction in progress costs related to an infrastructure project are also be reflected on this line.

- 7. Federal Requirements Applicable to Capital Fund and Operating Fund Activities.** Eligible small PHAs that elect, with HUD approval, to fully use their operating funds for capital fund expenditures must continue to follow statutory and regulatory requirements, including those related to the conduct of public hearings, Resident Advisory Board consultation, consideration of comments, board approval, and environmental reviews. (Environmental compliance is now separate from 5-Year Action Plans submissions; the obligation to secure environmental clearance prior to spending federal funds remains a PHA requirement.)
- 8. Effective Date.** This notice is effective upon issuance.
- 9. Paperwork Reduction Act.** The information collection requirements referred to 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. 3520) and assigned OMB control numbers 2577-0226, 2577-0157, 2577-0274 and 2535-0107.
- 10. Further Information.** Email questions or concerns to PIHOCI@HUD.gov.

/s/

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for Public and Indian Housing