



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

---

Special Attention: NOTICE PIH 2010-34 (HA)

Public Housing Agencies Issued: August 10, 2010  
Public Housing Directors  
HUD Field Offices Expires: August 31, 2011

Cross References: 24 CFR Parts  
905, 941 and 968  
PIH 2009-12 (HA)  
PIH 2009-31 (HA)

---

Subject: Information and Procedures for Implementation of Capital Funds Recovery Competition Grants

**I. Applicability:** This guidance provides Public Housing Agencies (PHAs) and HUD Field Offices with information and procedures for the implementation of Capital Funds Recovery Competition (CFRC) grants as authorized by the American Recovery and Reinvestment Act of 2009 (“Recovery Act”). This notice applies to PHAs awarded a competition grant in one of the five categories established under the revised Notice of Funding Availability (NOFA) published on June 3, 2009.

As further described in Section V (E) herein, this guidance includes the following deadline requirements:

<b><u>Category</u></b>	<b><u>Obligation Start</u></b>	<b><u>Obligation End</u></b>	<b><u>100 % Expenditure</u></b>
Category 1	9/28/2009	9/27/2010	9/27/2012
Category 2	9/9/2009	9/8/2010	9/8/2012
Category 3	9/24/2009	9/23/2010	9/23/2012
Category 4, Opt 1	9/23/2009	9/22/2010	9/22/2012
Category 4, Opt 2	9/24/2009	9/23/2010	9/23/2012

**II. Background:** On February 17, 2009, the President signed the Recovery Act. This legislation includes a \$4 billion appropriation of Capital Funds to carry out capital and management activities for PHAs, as authorized under section 9 of the United States Housing Act of 1937 (“the 1937 Act”). The Recovery Act required that \$3 billion of these funds be distributed as formula funds and the remaining \$1 billion be distributed through a competitive process.

**III. Purpose:** This Notice provides processing information for PHAs regarding the implementation of competitive grant funds.

#### **IV. Recovery Act CFRC Grant NOFA and Award:**

On May 7, 2009, HUD posted on its website its NOFA for HUD's American Recovery and Reinvestment Act Capital Fund Recovery Competition (CFRC) grants. On June 3, 2009, HUD published a revised CFRC NOFA that made changes, corrections, and clarifications to a number of criteria established in the CFRC NOFA posted on May 7, 2009.

In September 2009, the Office of Public and Indian Housing (PIH) awarded \$995 million to PHAs in 396 CFRC grants.

Five different types of grants were awarded under the CFRC as follows:

- Category 1: Improvements Addressing the Needs of the Elderly and/or Persons with Disabilities.
- Category 2: Public Housing Transformation.
- Category 3: Gap Financing for Projects that are Stalled Due to Financing Issues.
- Category 4, Option 1: Creation of Energy Efficient, Green Communities: Substantial Rehabilitation or New Construction.
- Category 4, Option 2: Creation of Energy Efficient, Green Communities: Moderate Rehabilitation.

#### **V. Recovery Act Capital Fund Initial Implementation**

CFRC grants are Capital Fund grants that are subject to special requirements both because they are funded with Recovery Act funds and because they were awarded pursuant to a competitive NOFA process.

There is a great deal of information on the Capital Fund Recovery Act web site, which is located at <http://www.hud.gov/offices/pih/programs/ph/capfund/ocir.cfm> and a subsidiary web page dedicated to the CFRC issues located at <http://www.hud.gov/offices/pih/programs/ph/capfund/recovcomp.cfm>. The Office of Public Housing Investments (OPHI) continues to update both websites frequently as it implements the Recovery Act programs. OPHI encourages grantees to familiarize themselves with the websites and to check the websites on a frequent basis to be aware of updates. HUD field office staff and OPHI grant managers will work with grantees to ensure that CFRC program plans are fully implemented in a manner in compliance with all HUD requirements.

##### **A. Annual Contributions Contract**

The Annual Contributions Contract (ACC) Amendment(s) have been executed for all CFRC grants. The ACC Amendment memorializes the agreements made between the PHA as a CFRC grantee, and HUD, and incorporates all documents and requirements relating to the grant, including the statutes and regulations governing the Capital Fund program, the Recovery Act, the June 3, 2009 NOFA and the application.

B. CFRC Primary Contact

The primary point of contact for grant administration issues for non-mixed finance grantees is the local HUD field office. The primary point of contact for mixed-finance grantees is the assigned grant manager.

C. HUD Form 50075.1 Annual Statement/Performance and Evaluation Report Parts I and II

The CFRC ACC amendment required grantees to submit a HUD Form 50075.1 Annual Statement/Performance and Evaluation Report Parts I and II, within 21 days of the effective date of the ACC amendment. Although many grantees submitted an electronic version of a HUD Form 50075.1 with the CFRC application, HUD only used it to document the proposed budget supporting the application rather than the submission of an official Annual Statement form for a funded grant.

In order to comply with this requirement, grantees were required to:

1. Complete the Form 50075 consistent with the Form 50075.1 budget form submitted with the CFRC application.
2. Include only information about the CFRC grant funds – not leveraged funds or other non-CFRC funds involved in the CFRC mixed finance modernization or development undertaking.
3. Properly sign and date the Form 50075.1. Depending on whether the activities included on the Form 50075.1 were already incorporated into the PHA's Five-Year Action plan and how the PHA had defined what is a significant amendment to the PHA plan, the PHA may have had to comply with the public hearing requirement outlined in 24 CFR 903.17.

(In this case, the PHA was authorized to provide a 10-day notice of the public hearing rather than a 45-day notice in accordance with the Secretary's exercise of Recovery Act waiver authority.)

4. Submit the signed Form 50075.1 to the local HUD field office Public Housing Director by Friday, November 6, 2009.

D. Line of Credit Control System (LOCCS) drawdown

### **Non-Mixed Finance Grants :**

Grant funds were placed in the 0100 Budget Line Item (BLI Reserved Budget) in the Department's LOCCS web system and are not generally available for drawdown. Once grantees have submitted HUD Form 50075.1 to the local HUD field office HUD will spread the budget in LOCCS in accordance with the budget submitted.

### **Mixed Finance Grants:**

*Prior to Mixed Finance Closing:* Grantees request HUD approval for predevelopment activities, prior to drawing down any funds. The grants manager notifies the local HUD office when the funds for predevelopment can be drawn down. Once funds for predevelopment are drawn down, grantees have 72 hours to pay the associated expenses.

*After Mixed Finance Closing:* At the time of the closing, grant funds are considered obligated, if the loan documents have been executed or construction contracts signed. The budget for development is approved as part of HUD's Mixed-Finance approval. However, final evidentiaries must be approved before funds can be drawn down. The Deputy Assistant Secretary approves the evidentiaries, and the grant manager provides the approved budget to the local HUD field office where the budget will be spread in LOCCS. Funds are available to the PHA pursuant to the approved budget.

### **E. Obligation and Expenditure of CFRC Grant Funds**

Obligation and expenditure requirements found at section 9(j) of the 1937 Act regarding the obligation and expenditure of Capital Funds do not apply to CFRC grants. The Recovery Act provides for alternate obligation and expenditure deadlines (and penalties) as follows:

- PHAs must obligate 100 percent of the grant within one year of the ACC amendment effective date. At the one year date all unobligated funds will be unilaterally recaptured.
- PHAs must expend at least 60 percent of the grant within two years of the ACC amendment effective date. At the two year date, if less than 60 percent is expended, all unexpended funds will be unilaterally recaptured.
- PHAs must expend 100 percent of the grant within three years of the ACC amendment effective date. At the three year date, all unexpended funds will be unilaterally recaptured.

The obligation and expenditure deadlines vary and are as follows:

<u>Category</u>	<u>Obligation Start</u>	<u>Obligation End</u>	<u>100 % Expenditure</u>
Category 1	9/28/2009	9/27/2010	9/27/2012
Category 2	9/9/2009	9/8/2010	9/8/2012
Category 3	9/24/2009	9/23/2010	9/23/2012
Category 4, Opt 1	9/23/2009	9/22/2010	9/22/2012
Category 4, Opt 2	9/24/2009	9/23/2010	9/23/2012

**Extensions of the Obligation Deadlines:** Extension of the obligation and expenditure deadlines are not permitted under the Recovery Act. Additionally, if a PHA fails to obligate any of its other Capital Fund grants during this time, an extension of the obligation deadline for that grant will not be approved based solely on the justification that the PHA was engaged in obligating Recovery Act funds, as it does not meet the criteria established in section 9(j) of the 1937 Act.

#### F. Civil Rights and Affirmatively Furthering Fair Housing Requirements

PHAs must comply with all applicable fair housing and civil rights requirements under 24 CFR 5.105(a), and the requirements to affirmatively further fair housing under 24 CFR 903.7(o). Design and construction must meet the Department's accessibility standards in accordance with applicable requirements pursuant to the Fair Housing Action, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Architectural Barriers Act.

In accordance with the NOFA requirements, all grantees provided an AFFH Certification as part of their CFRC grant application. The certification states that, if awarded funds, the PHA recipient will affirmatively further fair housing and comply with the requirements of 24 CFR 903.7(o).

#### G. Environmental Review Requirements

All PHAs must aid in compliance with the environmental review requirements of 24 CFR Part 50 or 24 CFR Part 58. No physical work or choice-limiting activities (such as land acquisition or commitments of funds for acquisition or work) may be undertaken until HUD approves the Responsible Entity's request for release of funds (RROF) and the related certification (under Part 58) or HUD completes the environmental review itself and notifies the PHA that it may proceed (under Part 50). Until that time, the CFRC grant will remain in the LOCCS initial budget. Once a Responsible Entity or HUD has made a determination allowing them to do so, PHAs are permitted to obligate and expend funds for activities and work items that are either categorically excluded and not subject to compliance requirements under related environmental laws and authorities under 24 CFR 50.19(b) or exempt/categorically excluded from the environmental review requirements under 24 CFR 58.34(a) and 24 CFR 58.35(b). (For further guidance see Part 50 and Part 58.).

The following are examples of activities that do not require environmental review and that may be part of a CFRC grant provided that the activities meet the requirements in the ACC amendment:

- Environmental studies;
- Inspections and testing of properties for hazards and defects;
- Administrative and management activities;
- Purchase of insurance and tools;
- Engineering and design costs;
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.
- Affordable housing predevelopment costs that do not have a physical impact; and
- Under Part 58, a responsible entity may determine that an activity that is categorically excluded from NEPA assessment under 24 CFR 58.35(a) is exempt from all environmental review if there are no circumstances that require compliance with the related environmental laws and authorities.

## **VI. Important Recovery Act and NOFA Requirements**

CFRC grants are subject to significant additional requirements over and above those that apply to the standard Capital Fund program. Some additional requirements are imposed by the Recovery Act appropriation, and others are imposed by the NOFA. Grantees should review the requirements enumerated in Section VI of the NOFA (pages 105-128).

It is important to note that a grantee's ability to revise the plan outlined in its application is limited. For example: A grantee may not reduce the amount of leverage and match that it certified as firmly committed in its grant application; for Category 4 applications, grantees are not able to change plans in ways that would cause failure to comply with the commitments made in the application that resulted in receiving points in the competition; and grantees cannot change project locations (e.g. switch sites) for the proposed CFRC grant activities. Grantees may not use the funds on more than one development or use any excess funds on activities other than those specified in the grant application. There are other limitations as well.

**No modification to the grant program outlined in the grantee's application in any significant way is permissible without the consultation and approval of HUD. Grantees should consult the local HUD field office as soon as possible if it anticipates the need to modify its grant program. Additional guidance on processing a modification is found in Section IX of this notice.**

**Eligible Uses of Funds :**

PHAs must use these funds on Capital Fund eligible activities currently identified in their grant application.

**Restrictions on Use of Funds :**

- Capital Funds awarded under the Recovery Act cannot be transferred to or used for operations or rental assistance activities. (These funds cannot be transferred to Account 1406 Operations).
- All expenditures from Account 1410 (Administration) are limited to 10 percent of the total grant. A PHA may draw up to .11 percent of each expenditure reimbursement for administration of the Recovery Act grant. With field office approval, a PHA may draw beyond .11 percent of the expenditure if the PHA demonstrates that it has already incurred the administrative expense. Again, the total amount drawn down for administration is capped at 10 percent of the grant.

(Note: PHAs must comply with Recovery Act reporting requirements for funds drawn for administration. Because PHAs are required to report on the entire Capital Fund grant, including the management fee paid to the Central Office Cost Center (COCC), to the extent that funds from BLI 1410 (1) creates and/or retains jobs, (2) develops and/or rehabilitates housing and/or (3) improves energy efficiency, a PHA is required to report this information.)

- Management Improvements can only be used for activities that are expressly part of the grant application. Management improvements cannot exceed 20 percent of the total grant and cannot be used for operations or rental assistance activities such as staff training, resident assistance, security salaries, and maintenance staff salaries unless applied to force account work on a capital project.

Funds must be used in accordance with section 1604 of the Recovery Act which prohibits use of these funds for any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool.

- Use of Recovery Act grants for replacement reserves is prohibited.

**Procurement:** The following procurement requirements shall be followed:  
**(Attachment I -- Capital Fund Recovery Grants, Part 85 and State and Local Procurement Requirements**

<http://www.hud.gov/offices/pih/programs/ph/capfund/ocir/recvactprecreq.pdf>)

- 1) Priorities: Recovery Act requirements and approved grant items.
- 2) State and Local: Any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to CFRC Grants. PHAs shall instead follow the Part 85 requirements.

- 3) Part 85 Compliance: PHAs shall amend their procurement standards and policies as necessary in order to expedite and facilitate the use of the funds. This amended policy can be used only for procurements related to Capital Fund Recovery Act, (meaning both CFCR and formula-based grants). This must be done in writing and consistent with PHA policies and procedures (such as Board approval) and labeled as Capital Fund Stimulus Grant Procurement Policy. Specifically, PHAs shall remove all procurement standards that are contrary to Part 85 or the Recovery Act. Where permitted by Part 85, PHAs may insert their own procedures provided that they are not contrary to the purposes of the Recovery Act.
  - a. For example, a PHA may use their existing protest procedures, written codes of standards for employees engaged in the award and administration of the contracts and other procedures as long as they are not contrary to Part 85.
  - b. PHAs shall continue to follow all Part 85 requirements regarding conflicts of interest, contract cost and price.
- 4) HUD Handbook: PHAs may use the Procurement Handbook for Public Housing Agencies (7460.8 rev-2) for guidance on 24 CFR 85.36. The Handbook can be found at:<http://www.hud.gov/offices/adm/hudclips/handbooks/pihh/74608/index.cfm>.
- 5) Noncompetitive Proposals: According to 24 CFR 85.36(d)(4), if solicitation of a proposal is only from one source or if the PHA finds that after solicitation of a number of sources, that competition is inadequate, the PHA may award the contract noncompetitively where small purchase procedures, sealed bids or competitive proposals are infeasible and one of the circumstances in 85.36(d)(4)(i) applies. One such circumstance is public exigency that will not permit a delay resulting from competitive solicitation (85.36(d)(4)(i)(B)). If the PHA finds that other competitive methods of procurement are infeasible, HUD will support the PHA's use of the public exigency circumstance based on the purpose and requirements of the Recovery Act. Section 3 of the Recovery Act provides that these funds shall be managed and expended to achieve the purposes specified including commencing expenditures and activities as quickly as possible consistent with prudent management. Further, the Recovery Act imposed expeditious obligation and expenditure requirements on the Capital Fund Recovery Act Grants and directs HUD to assist PHAs as necessary to expedite and facilitate the use of these grants. PHAs may use the noncompetitive proposals method, but must do so on a contract-by-contract basis and in compliance with all Part 85 requirements including the requirement for a cost analysis and the conflict of interest requirement. The PHA must ensure that the noncompetitive proposals process followed is clearly captured in their amended Capital Fund Stimulus Grant Procurement Policy. Grant Procurement Policy.

Further, PHAs must maintain records sufficient to detail the significant history of each contract's procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (85.36(b)(9)). No HUD pre-award review is required for noncompetitive proposals as stated in Section 8.4(C), Chapter 8 of HUD Handbook No. 7460.8 Rev 2. However, all PHAs are reminded that they must make available upon HUD's request the PHA Capital Fund Recovery Act Grant Procurement Policy and any documents requested related to procurement activity as stated in 24 CFR 85.36(g).

- 6) **Force Account:** To the extent feasible, the PHA should consider employing existing or additional force account laborers on either a permanent or a temporary basis to perform Capital Fund Recovery Act grant work. See 24 CFR 968.105 and 968.120. No prior HUD approval is required specifically for force account labor, but such work must be incorporated into the Capital Fund planning, budgeting and reporting documents.

**Buy American:** PHAs shall follow Buy American requirements of section 1605 of the Recovery Act and use only iron, steel and manufactured goods produced in the United States in their projects. Please refer to PIH 2009-31 (HA) PIH Implementation Guidance for the Buy American Requirement of the American Recovery and Reinvestment Act of 2009 including Process for Applying Exceptions <http://www.hud.gov/offices/pih/publications/notices/09/pih2009-31.pdf>

**Prevailing Wages:** All laborers and mechanics (other than volunteers under 24 CFR Part 70) employed on construction or rehabilitation carried out with Capital Fund Recovery Act Grants, including force account workers, must be paid prevailing wages as determined under Davis-Bacon Act.

**Troubled PHAs:** PHAs that are troubled under the Public Housing Assessment System (PHAS) will be subject to additional monitoring and oversight by HUD as deemed necessary to ensure proper use of the Capital Funds received under the Recovery Act.

**Central Contractor Registration:** PHAs must maintain current registrations in the Central Contractor Registration (CCR) at all times during which they have active federal awards of Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) number is one requirement for CCR registration. Additional information regarding DUNS and CCR is posted at <http://www.hud.gov/offices/pih/programs/ph/capfund/ocir/dunnsclar.pdf>. Grantees must enter their DUNS numbers into LOCCS. DUNS numbers and CRR registration must be renewed annually.

## **VII. Definitions**

**Obligation:** Obligations mean the cumulative amount of modernization commitments entered into by the PHA. Examples of obligations are contract execution for contract labor, materials or services; start and continuation of physical work by force account labor; and start and continuation of administrative work. Contract execution means execution of the contract by both the PHA and the contractor.

For force account work, all funds for a group of sequentially-related physical work items are considered obligated when the first item is started, such as kitchen cabinet replacement followed by kitchen floor replacement, but only where funds continue to be expended at a reasonable rate. Where one force account physical work item is started and is not sequentially related to other physical work items, such as site improvements and kitchen remodeling, then only the funds for the one physical work item started are considered obligated.

For Mixed Finance transactions pursuant to 24 CFR 941, grant funds are considered obligated at the time of closing if the loan documents have been executed or construction contracts signed.

**Expenditure:** Where funds have been obligated, the PHA is expected to show reasonable progress through increasing fund expenditures each month at a rate that would allow completion within the timeframe established for Capital Fund Recovery Act grants. Expenditures mean the cumulative amount of Capital Funds distributed by the PHA documented through written checks or electronic means. The PHA shall requisition funds only when payment is due and after inspection and acceptance of the work and shall distribute the funds within 72 hours of receipt of the funds.

**Force Account:** Force account is defined in the Capital Fund Program (CFP) as labor employed directly by the PHA either on a permanent or a temporary basis. For Recovery Act work, PHAs are permitted to use force account to accomplish capital projects, where included in the Capital Fund Program Budget, Annual Plan or Five-Year Action Plan, without additional approval from the local HUD field office.

**Force Account Labor:** Force account labor costs for carrying out physical improvements, including technical salaries, employee benefit contributions and, where required by State or local law, contributions to an unemployment compensation fund, shall be charged to the appropriate development account for hard costs; i.e., Site Improvements (Account 1450); Dwelling Structures (Account 1460); or Non-dwelling Structures (Account 1470). For Recovery Act work, the PHA may undertake the modernization activities using force account labor, only where included in the CFP Budget, Annual Plan or Five-Year Action Plan, without any additional HUD approval. The PHA shall use force account labor where it is cost-effective and appropriate to the scope and type of physical improvements and the PHA has the capacity to serve as its own main contractor

and to maintain an adequate level of routine maintenance during force account activity.

**VIII. Moving to Work Agency Requirements:** PHAs participating in the Moving to Work Demonstration (“MTW”) are authorized to combine operating and capital assistance provided under section 9 and voucher assistance under section 8 of the 1937 Act as part of the regular appropriations process.

However, line item appropriations, which are supplemental to the regular appropriations process, such as the Recovery Act, may be used only for the specific purpose for which they were appropriated. Further, the Recovery Act states that “notwithstanding any other provision of law, (1) funding provided under this heading may not be used for operating or rental assistance activities.” This provision expressly overrides the authority to combine funds contained in the MTW Authorizing statute. Accordingly, the funds provided under the Recovery Act cannot be combined with an MTW agency’s operating or voucher funds, or otherwise used for purposes, notwithstanding the agency’s status as a MTW participant. Therefore, these funds cannot be assigned to Account 1492.

To ensure that all housing authorities follow the above terms of the Recovery Act, MTW agencies will be expected to adhere to the same requirements as non-MTW agencies. These will include mandatory reporting requirements, as PHAs will be expected to report separately on Recovery Act expenditures on a quarterly basis.

### **IX. Processing CFRC Revisions**

As described in Section VI, CFRC revisions are not permitted without HUD approval. If a PHA anticipates a need to modify the grant program outlined in their application in any significant way, it must submit a written request. For non-mixed finance grants, requests are submitted to the local HUD field office. (These requests will be forwarded to the Office of Field Operations for processing.) For mixed finance grants, requests are submitted to the assigned grant manager.

In all cases, a copy of the written request should be submitted to:

Jeff Riddel  
Director, Office of Capital Improvements  
451 7th Street SW, Room 4146  
Washington, DC 20410

All requests will be considered on a case-by-case and the PHA notified of HUD’s determination.

### **X. Waivers :**

HUD may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of Capital Fund Recovery Act funds, except for requirements related to fair housing, nondiscrimination, labor standards, obligation and expenditure deadlines and the environment, upon a finding that such a waiver is necessary to expedite or facilitate the use of the Capital Fund Recovery Act funds. HUD may issue further instructions on waivers and processing. However, until such time, PHAs may submit requests for regulatory or statutory waivers to their field office for transmittal to HUD headquarters for review and approval.

**XI. Additional Guidance:** Guidance on data collection, reporting requirements and other Recovery Act provisions has been issued and can be found at:

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

---

Sandra B. Henriquez, Assistant Secretary for  
Public and Indian Housing