

Recovery Act Capital Fund Formula Grant
Frequently Asked Questions #3
As of July 24, 2009

PHYSICAL NEEDS ASSESSMENT

Q7: Why has HUD required a Physical Needs Assessment (PNA) be completed as part of the receipt of Recovery Act Capital Funds?

A7: The need for PHAs to engage in strategic planning has increased considerably over the past decade. Previously the approach to addressing physical needs at PHAs across the public housing portfolio primarily involved PHAs identifying their highest priority needs each year and then dedicating their capital funding towards the highest priority needs until they had exhausted that funding. This process would then repeat itself each year as PHAs received funding. The planning requirements in such an environment were short term in nature and primarily involved the identification and prioritization of needs that would arise over a five year time frame.

For the past decade PHAs have become increasingly active in utilizing a variety of forms of financing to modernize and develop public housing. The pledges and commitments involved in financing carry with them opportunity costs. Since such pledges and commitments are substantive in nature they operate to limit a PHA's ability to pursue alternate priorities. While the same could be said of the normal expenditure of Capital Funds, it is the long term nature of the commitments involved in financing that requires the planning regimen of PHAs to evolve from one that is short term in nature, to something that is more strategic. Moreover, the transition to project based accounting and management (known as asset management) emphasizes the importance of each project to operate on its own, further highlighting the need for PHAs to plan strategically.

HUD is utilizing the opportunity of the Recovery Act to revise its Physical Needs Assessment requirements so that it meets the needs of today's public housing portfolio (Recovery Act PNA). When complete, it will provide PHAs with a much enhanced strategic planning tool. It will also provide data on a macro level to HUD in a format that better facilitates HUD's ability to manage the nation's public housing portfolio.

It is HUD's intent to make the process of revising the PNA requirements a collaborative one. HUD intends to consult with PHAs and industry groups in an effort to solicit their input in regard to what form of PNA would best serve the needs of the public housing portfolio.

Q8: Please provide guidance on the Recovery Act Capital Funds requirement for Authorities to complete a PNA.

A8: PHAs are required pursuant to paragraph 7(k) of the American Recovery Act (ARRA) Formula Grant Capital Fund (CFP) Amendment to the Consolidated Annual Contributions Contract (the Recovery Act ACC Amendment) to provide a Physical Needs Assessment, as specified by HUD. However, as noted above, HUD is in the process of revising the PNA so that it can better meet the needs of HUD and PHAs. The Recovery Act ACC Amendment indicates that the PNA shall be completed “as specified by HUD.” Therefore, PHAs are advised to not complete the PNA required by the Recovery Act ACC Amendment until the Recover Act PNA is available.

Q9: Should PHAs budget or utilize Recovery Act Capital Funds for the completion of the Recovery Act PNA?

A9: Recovery Act Capital Funds must be obligated within one year of the effective date of the Recovery Act ACC. Given the fact that HUD, in collaboration with industry groups, is revising PNA requirements, it is likely that the Recovery Act PNA will not be complete within a timeframe which would permit PHAs to timely obligate Recovery Act Funds for that purpose. Thus the Recovery Act ACC indicates that PHAs may obligate and expend non-Recovery Act Capital Funds to conduct the Recovery Act PNA. PHAs are therefore advised not to budget any Recovery Act Capital Funds for the completion of a Recovery Act PNA.

Q10: If my PHA has begun or completed a PNA already, is that an eligible use of Recovery Act Capital Funds?

A10: If a PHA completes a PNA of its public housing portfolio it may obligate and expend Recovery Act Capital Funds on that PNA provided that it does so within the statutory timeframes.

Q11: If a PHA recently completed a PNA, can that PNA satisfy the requirement in the Recovery Act ACC Amendment to complete a PNA?

A11: The Department has not made a determination on this matter. The requirements for completing new PNAs will be determined by HUD at a later date in consultation with industry groups. HUD will publish such requirements as part of guidance it provides on Recovery Act PNAs.

Q12: Can housing authority staff conduct the PNA?

A12: Requirements for the professional credentials of a person or firm completing Recovery Act PNAs will be determined by HUD at a later date in consultation with industry groups. HUD will publish such requirements as part of guidance it provides on Recovery Act PNAs.

PROCUREMENT

Q19: From PIH Notice 2009-12 Section VI, Procurement, paragraph 3: This section says that a PHA shall amend its procurement policy to facilitate obligation and expenditure of Recovery Act funds. However, if a PHA believes that it can obligate and expend the funds using its current policies, must they still amend their policy?

A19: Yes. The PHA procurement policy must comply with all the criteria in the Recovery Act Procurement requirements. The **“Recovery Act Procurement requirements”** are captured in the ACC Amendment for Recovery Act grants, PIH Notice 2009-12, including the provisions on Buy American, and Office of Management and Budget (OMB) Guidance on the Buy American provisions at 2 CFR Part 176.

A PHA’s procurement policy is to be amended to remove requirements relating to the procurement of goods and services arising under state and local laws and regulations, based on the HUD Secretary’s exercise of Recovery Act authority to direct that requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Recovery Act Capital Funds. State and local laws and regulations shall not apply except where permitted by Part 85 (i.e., conflict of interest and bid protest procedures) and as described in PIH Notice 2009-12, and the state and local governments cannot take any adverse action against the PHA related to their procurement in compliance with the Recovery Act procurement requirements. This is to be stated in the PHA’s Recovery Act addendum to their procurement policy.

To illustrate this, a PHA with a state or local small purchase procedures threshold of \$25,000 would have to raise their small purchase procedures threshold to \$100,000 for contracts using Capital Fund Recovery Act funding in order to be in compliance with the Recovery Act, Part 85, and HUD’s preemption of state and local procurement laws.

However, a PHA can always choose under section 85.36, where the PHA considers it appropriate, to use the competitive proposals method for any size of contract (e.g., \$25,000); the sealed bid method (usually for construction contracts); or noncompetitive proposals. PHAs can continue to make these choices with Capital Fund Recovery Act funding provided they make such choices in a manner consistent with their Recovery Act obligations.

Q20: If a PHA used the sample procurement policy from the HUD handbook and only modified it for the State amount of small purchases, is there anything in the sample that requires amendment?

A20: Page a-1 of Appendix 1 “Procurement Policy Felton Housing Authority” in PIH Procurement Handbook 7460.8 REV 2 provides “In the event an applicable law or regulation is modified or eliminated or a new law or regulation is adopted, the revised law or regulation shall to the extent inconsistent with these Policies, automatically supersede these Policies.” The Recovery Act has provided for the exception from state and local procurement laws and regulations and would act to amend this Procurement Policy.

However, for transparency and to alert all PHA personnel involved in procurement as well as all potential contractors which may request a copy of the PHA procurement policy, PHAs must, at minimum, add an addendum to their Procurement Policies to reflect the Recovery Act procurement requirements. These requirements are captured in the revised ACC Amendment for the Recovery Act grant(s), PIH Notice 2009-12 and OMB Guidance on the Buy American provisions at 2 CFR Part 176. PHAs can attach these relevant documents to their current procurement policies and/or incorporate their provisions by reference.

Q21: When are these provisions applicable?

A21: If a PHA is using more than one source of funds or expanding the scope of an existing contract than was procured using state and local requirements, PHAs must continue to follow state and local if they are issuing a change order or expanding the scope.

Q22: If a PHA did procure with Recovery Act funds, using state and local requirements, what should be done?

A22: HUD would issue a notification of deficiency and require them to change the procurement policy, but this would not void the obligation and expenditure. HUD may require additional technical assistance for the PHA, and/or HUD may impose procurement review thresholds depending on the facts and circumstances.