

Recovery Act Capital Fund Formula Grant
Frequently Asked Questions
As of April 10, 2009

Notice PIH 2009-12 entitled, "Information and Procedures for Processing American Recovery and Reinvestment Act Capital Fund Formula Grants" was published on March 18, 2009. The Notice can be found at: <http://www.hud.gov/offices/pih/programs/ph/capfund/ocir.cfm>

The Notice provides additional guidance regarding the recent award of \$2.985 billion in Capital Fund formula grant funds pursuant to the Recovery Act, including uses (and restrictions on uses) of funds.

GENERAL

Q1: What obligation and expenditure deadlines apply to PHAs?

A1: PHAs are required to obligate 100 percent of the formula funds made available to them under the Recovery Act within 1 year of the date on which funds become available to the PHA for obligation and this date to complete obligation would be March 17, 2010. They are required to expend 60 percent of the funds within 2 years of the date on which funds become available and 100 percent of the funds within 3 years of the date on which funds become available. The first expenditure deadline is March 17, 2011 and the final expenditure deadline is March 17, 2012.

Q2: What happens if a PHA misses an obligation or expenditure deadline?

A2: If a PHA fails to comply with the 1-year obligation deadline, then the remaining *unobligated* funds will be recaptured and redistributed to PHAs that are in compliance with these requirements. Similarly, if a PHA fails to comply with the 2-year or 3-year expenditure deadlines, then the *balance of the funds at those times* will be recaptured and reallocated to other PHAs that are in compliance with these requirements.

Q3: Can you clarify the following provision?

Capital Fund Annual Statement Parts I & II, form HUD 50075.1, and Board Resolution: *With the acceptance of this grant, the PHA must submit a Capital Fund Annual Statement Parts I & II, form HUD 50075.1 and a Board Resolution, if the work items are not included in a currently approved Annual or Five-Year Action Plan, to the local HUD field office no later than 21 days after the effective date of the grant. No specific Board Resolution form is required, but must indicate that the PHA Board has accepted this grant and that the Executive Director or other designated official may sign on behalf of the PHA.*

A3: All PHAs are required to submit an Annual Statement Part I and II for the Recovery Act grant that details the budget line items and the projects that will benefit from the funding. The Annual Statements are to be submitted by April 10, 2009. See the question below for additional information on the board resolution.

Q4: When is a Board Resolution required?

A4: A Board Resolution is only required by April 10, 2009 if the work items contained in the Annual Statement are not already included in an approved Annual or Five-Year Action Plan. PHAs that are undertaking work items that are not in an approved Annual or Five-Year Action Plan need to revise/amend their Annual or Five-Year Action Plan, to the extent required. A PHA must adhere to their own PHA Plan definition for a significant amendment to discern if the public hearing and notice requirements are triggered. Please note PIH-2009-12 has shortened the public hearing notice period to 10 days.

Q5: Is a Board Resolution required if there is a significant amendment to the Annual or Five-Year Action Plan? What is the timeframe for submission?

A5: The Board Resolutions that are required when making significant amendments to the PHA Plan are still required. PHAs should submit their revised PHA Plan with appropriate Board Resolution by May 4th, 2009. It is important to note that all documents, including the revised PHA Plan, must be submitted to a PHA's local Field Office.

Q6: Will a PHA have the opportunity to revise its Five-Year Action Plan or its Annual Plan after its initial submission of an Annual Statement?

A6: Yes. A PHA can amend its Five-Year Plan or Annual Plan at any time. However, if work items are not contained in the Five-Year Plan or Annual Plan, then PHAs are asked to revise this plan by May 4, 2009 and submit it to the field Office. Please note that for Recovery Act funds only, a revised process for obtaining public comment on Five-Year Plan and Annual Plan applies, as follows:

According to 24 CFR 903.17, the PHA's board of directors or similar governing board must conduct a public hearing to discuss the Five-Year Plan and/or Annual Plan and invite the public to comment on the plan. The regulation provides a 45-day notice period informing the public that the information is available for review and inspection and announcing the public hearing. For all PHAs accepting these grant funds (including MTW agencies), the Secretary is using the waiver authority in the Recovery Act to reduce this public notice period to 10 calendar days for PHAs amending their Five-Year Plan and/or Annual Plan due in part to these grant funds. This waiver provides for adequate notice, but does not limit the information and activities required to be performed by the PHA. This waiver also permits these PHAs to continue planning and ultimately obligation and expenditure of these funds as intended by the Recovery Act.

Q7: Can I develop new ACC units using Recovery Act funds that exceed the October 1999 unit count?

A7: Yes. The Capital Fund section of the Recovery Act provides "That notwithstanding any other provision of law....any restriction of funding to replacement housing uses shall be inapplicable." Therefore, section 9(g)(3) of the United States Housing Act of 1937 is inapplicable with regards to this funding and PHAs can construct new public housing without the restrictions in section 9(g)(3) when using Recovery Act funds. If other Public Housing funds are used in the development then section 9(g)(3) would apply. PHAs should continue to follow Part 941 and submit their Development Proposal for HUD review.

ELIGIBLE USE OF FUNDS

Q1: The statute says that PHAs “shall prioritize capital projects that are already under way.” We have demolished a property and have an approved plan to go forward with building a high-rise property for elderly occupancy. May we use the Recovery Act funds for construction?

A1: Yes. The PHA may use the Recovery Act funds for the construction of new units, provided that the PHA can meet the applicable obligation and expenditure deadlines. So, for conventional development, the PHA would need to submit a development proposal, have it approved and contract with a builder within twelve months to meet the obligation deadline.

Q2: May a PHA use Recovery Act funds to purchase land for new development?

A2: Yes. The PHA may use the funds to purchase land for new development of public housing units. However, a PHA must submit a development proposal (with a site acquisition plan) to HUD obtain HUD approval and obligate the funds prior to the obligation deadline.

Q3: May a PHA use Recovery funds for the acquisition of public housing units?

A3: Yes. A PHA must submit a Development Proposal, with a site acquisition plan, to HUD, obtain HUD approval, and obligate the funds prior to the obligation deadline.

Q4: May a PHA use Recovery Act funds for administrative expenses?

A4: Yes. A PHA may use Recovery Act funds for administrative expenses. However, some limitations apply. Total expenditures from Account 1410 (Administration) are limited to 10 percent of the total grant. A PHA may draw down from this BLI in two instances, when : (1) the PHA is vouchering funds for an expense, it may take an amount equal to 10 percent of that voucher for administration or (2) the administrative expense has been incurred already. For example, if a PHA has a \$120,000 grant, its total administrative expenses cannot exceed \$12,000. If the PHA submits a voucher for \$19,000 against any other BLI (like 1460, Dwelling Structures), the PHA is permitted to voucher an additional \$1900 from BLI 1410 for administrative expenses against the \$12,000 cap.

Q5: May a PHA use Recovery Act funds to pay for an energy audit?

A5: Yes.

Q6: May a PHA use Recovery Act funds for non-public housing units?

A6: No, the funds are restricted to public housing rental and homeownership units and non-dwelling structures funded under section 9 of the 1937 Housing Act.

Q7: May a PHA use the Recovery Act funds to pay off existing debt for non-ACC units owned and controlled by the PHA in order to bring the units under the ACC?

A7: Yes. The funds may be used to pay off existing debt for non-ACC units owned and controlled by the PHA in order to bring the units under the ACC if the PHA submits a development proposal and obtains HUD approval.

Q8: Some PHAs have made obligations after Recovery Act enactment but before they have received the ACC award. With proper support that these obligations are proper and in connection with Recovery Act, will PHAs be able to pay costs incurred after enactment but before receiving their ACC award from ARRA Capital Fund resources?

A8: PHAs can begin to obligate Recovery Act funds starting March 18, 2009. The PHA must be sure that any obligations it is recording against Recovery Act fund is for new work that is not previously obligated. PHAs should contact their local field office with questions regarding eligible obligations.

Q9. PHAs are encouraged, among other things, to use Recovery Act funds in Capital Fund projects that are already underway. But Recovery Act funds cannot supplant, and can only supplement other funding. Would project acceleration (compressing a multi-year project to one or to fewer years) be a supplemental use of Recovery Act funds?

A9: PHAs cannot replace existing Capital Fund obligations with Recovery Act funding. PHAs can certainly expand and/or accelerate existing contracts and work orders to complete work for which there was no previous funding or obligation in place. Please note that when expanding the scope of existing projects, the PHA is required to comply with 24 CFR part 85 and maintain separate accounting for the Recovery Act funds and will be required to report on the use of these funds separately. Again, PHAs should contact their local field office with questions about obligation of Recovery Act funds.

Q10: Can Recovery Act funds be used on units that are approved for demolition?

A10: Recovery Act Funds CANNOT be used to renovate units already approved for demolition except to make repairs related to health and safety issues for occupied units.

PHYSICAL NEEDS ASSESSMENT

Q1: Will the Department require a PHA to provide a PNA as a condition of receiving a Recovery Act Capital Fund formula grant?

A1: Yes. However, the PNA does not need to be completed prior to a PHA using its Recovery Act Funds.

Q2: May a PHA use Recovery Act funds to pay for a PNA?

A2: Yes, but a PHA is not required to use the Recovery Act funds to pay for the PNA. Funds from another Capital Fund formula grant can be used, as well.

Q3: Do PHAs need to prepare a physical needs assessment specific to the dollars appropriated under the Recovery Act?

A3: No. The Recovery Act funds may be used for purposes outlined in a PHA's existing Annual Statement.

Q4: When will a PHA know what the PNA requirements will be?

A4: HUD will provide additional guidance.

PROCUREMENT

Q1: Can the Secretary waive local procurement laws?

A1: Yes. The statute provides that the Secretary with the authority to waive local procurement requirements. The ACC Amendment for the Recovery Act funds provides the waiver. PIH Notice 2009 -12 provides additional information about the procurement requirements that apply.

Q2: HUD has preempted state and local procurement standards (in the Recovery Act Capital Fund ACC Amendment) that exceed Part 85 requirements. When will PHAs know the procurement requirements they will need to meet in connection with the Recovery Act funds?

A2: Please refer to Notice PIH 2009-12 for guidance on the procurement requirements that apply to Recovery Act funds. For Recovery Act Capital Funds only, alternate procurement requirements shall be followed as follows:

- Any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants. PHAs shall instead follow the Part 85 requirements, and

- 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 Stimulus 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.**

Q3: What if a PHA is required by its own procurement policy to go with the most stringent procurement requirement?

A3: PHAs should make their legal counsel aware that the HUD has suspended state and local procurement requirements, as authorized by the Recovery Act. Language in the Capital Fund program ACC amendment addresses this topic. Legal counsel may nonetheless advise taking measures locally. For example, a PHA might wish to adopt a board resolution recognizing that the procurement of goods and services using Recovery Act funds is subject to a federal exemption. **This action would not be contrary to Part 85; however, PHAs have been directed to 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. PHAs should refer questions regarding Part 85 to their Field Office.**

Q4: If a PHA combines existing Capital Fund monies with Recovery Act monies, which rules or requirements will apply? For example, if a PHA combines existing capital and Recovery Act funds, is the project exempt from state and local procurement requirements?

A4: If a PHA adds Recovery Act funds to an existing procurement that is using Capital Funds, state and local procurement requirements continue to apply. If a PHA uses both Capital Fund Formula Grants and Recovery Act Formula Grants in a new procurement, state and local procurement requirements continue to apply as well. PHAs are only exempt from state and local procurement requirements when the procurement only involves Recovery Act funds.

DUNS NUMBERS AND CENTRAL CONTRACTOR REGISTRATION

Q1: Some PHAs have run into problems, not with DUNS numbers, but with CCR registration. Starting recently, PHAs must supply GSA with a Trading Partner Identification Number (TPIN) as well as a DUNS number in order to renew their registration. The lack of CCR renewal doesn't jeopardize an HA's eligibility. Is that correct?

A1: Correct, PHAs must have a DUNS number registered with the CCR in order to drawdown their Recovery Act funds. Until a PHA's DUNS number is entered into LOCCS and verified with the CCR, their funds will be *obligated* in LOCCS but the PHA will not be able to draw the funds from or report obligations to LOCCS.

LOCCS

Q1: How will I access the Recovery Act grant?

A1: The Capital Fund Recovery Grants (CFRG) program has been created in LOCCS to access the grant. Please note that the PHAs with current LOCCS access will automatically be given equivalent LOCCS CFRG authority.

Q2: What Budget Line Items are not permitted for the Recovery Act grant?

A2: The following Budget Line Items that are normally used for the Capital Fund will not be used for the Recovery grants and will not be available in LOCCS. Please do not use the following Budget Line items.

- 1406 Operation
- 1492 MTW
- 1501 Collateral Exp/Debt Service
- 9000 Debt Reserves
- 9001 Bond Debt Obligation
- 9002 Loan Debt Obligation

Q3: What else do I need to do in LOCCS to access to my Recovery Act funds?

A3: In the CAPITAL FUND RECOVERY GRANT (CFRG) LOCCS area, an option has been added for the assignment of the DUNS number. This should be the DUNS number that is registered with the CCR. PHAs are required to log into the CFRG program area and assign a DUNS number to their Recovery grant. Please note that you will not be able to draw down Recovery Funds until a DUNS number has been assigned and that the DUNS number is registered with the CCR and entered into LOCCS.

REPORTING

Q1: What sort of reporting requirements will apply generally?

A1: HUD will be issuing guidance shortly. HUD will require quarterly reporting on the use of Recovery Act funds, as determined by the Office of Management and Budget (OMB). In addition, HUD will establish reporting requirements specific to the Recovery Act Capital Funds, such as number of units rehabilitated, number of units built, etc.

MOVING TO WORK AGENCY REQUIREMENTS

Q1: What requirements will apply to Moving to Work (MTW) agencies?

A1: MTW agencies will not be permitted to combine Recovery Act funds with their operating or voucher funds. MTW agencies will be subject to the same quarterly reporting requirements as non-MTW agencies.

TROUBLED AGENCY REQUIREMENTS

Q1: Did PHAs designated as troubled receive Recovery Act Capital Formula funding?

A1: Yes.

Q2: Will Troubled PHAs be subject to additional monitoring and oversight?

A2: Yes. Troubled Agencies 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. Additional guidance will be issued shortly.