



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

Special Attention of: Public
Housing Agency Directors;
Public Housing Field Office Directors

Notice PIH-2012- 48 (HA)

Issued: November 28, 2012

Expires: This notice remains in effect until amended, revoked, or superseded

Cross References: Capital Fund Guidebook:
Chapter 4. Emergencies and Natural Disasters,
Coordination of HUD and FEMA Disaster
Assistance to Public Housing
Authorities (PHAs), 9523.7 Public Assistance
Funding for Public Housing Facilities
for Public Housing Facilities

Subject: HUD Funding for Non-Presidentially Declared Natural Disasters

- 1. Purpose:** This Notice provides guidance to public housing authorities (PHAs) regarding the implications of the repeal of Section 9(k) of the United States Housing Act of 1937 on Presidentially and non-Presidentially declared natural disasters.
- 2. Applicability:** This Notice applies to PHAs seeking natural disaster grant funding from the Emergency Capital Needs Fund for natural disasters declared on or after October 1, 2008. PHAs suffering from damage due to non-Presidentially declared natural disasters should follow the application process outlined in this Notice. PHAs suffering from damage due to Presidentially declared disasters should refer to Section 9 of this Notice and contact the Federal Emergency Management Agency (FEMA) directly for guidance regarding the application process for its Public Assistance program. Additional information related to FEMA is located in Section 9 and FEMA's contact information is listed in Section 10(b) below.
- 3. Background and Implications:** On July 30, 2008, Congress passed the Public Housing Disaster Relief Act of 2008, which repealed Section 9(k) of the United States Housing Act of 1937. As a result, HUD may now provide disaster assistance only to those PHAs that suffer damage due to a non-Presidentially declared natural disaster. FEMA is now authorized to fund the permanent repair of all PHA facilities that suffer damage as the result of a Presidentially-declared disaster. FEMA may also provide emergency assistance during non-Presidentially declared natural disasters.

4. Eligibility for Non-Presidentially Declared Natural Disaster Assistance From HUD:

- a. Definition:** A natural disaster is an extraordinary event, such as an earthquake, flood, tornado or hurricane. Natural disaster assistance from the Emergency Capital Needs fund is no longer available to PHAs for damage resulting from a major disaster or emergency declared by the President.
- b. Eligibility to apply:** Subject to the availability of funds, a PHA may receive natural disaster assistance from the Emergency Capital Needs Fund regardless of the availability of other Capital Funds or reserves, but only to the extent that the PHA's needs are in excess of its insurance coverage or other Federal assistance (e.g., flood insurance). A PHA may only receive natural disaster assistance for damage caused by a non-Presidentially declared natural disaster occurring in the same Federal Fiscal Year (FFY) as the Emergency Capital Needs Funds were appropriated.
- c. Eligible uses:** Natural disaster grants can only be used to pay costs associated with the repair or replacement of a public housing project damaged as a result of a non-Presidentially declared natural disaster and not for non-routine maintenance or improvements beyond the PHA's pre-disaster state.
- d. Funding:** Natural disaster funding will be awarded on a first come, first serve basis. Applications will be date stamped on the day the Field Office receives the PHA's completed application via email. Thus, the Department highly recommends that PHAs submit a preliminary grant application, as discussed in Section 5 below, immediately after disaster damage has occurred. If available funds are exhausted, those preliminary (or final) grant applications that were not funded will be placed in a queue based on the order the applications were received. If funds become available due to recaptures, the Department will fund applications in the queue until all available funds are exhausted.

5. HUD-Preliminary Application Process for Non-Presidentially Declared Natural Disasters:

- a. Process for requesting a natural disaster grant:** When a PHA experiences damage to its facilities due to a non-Presidentially declared natural disaster it can submit a preliminary application. The PHA may submit a preliminary application if there are immediate repairs that need to be made to preserve the property or safety of public housing residents, and the agency has not yet compiled all of the information, such as the detailed cost on the loss and the amount of any reimbursement the PHA will be receiving.

If the PHA submitted an approved preliminary application, it either submits a final application if additional funds are required, or, enters into the reconciliation process, as described in Section 5(j), with the Department if no additional funds are needed. If the PHA chooses not to submit a preliminary application, or if its preliminary application was not approved, the PHA follows the instructions for submitting a final application below.

- b. Environmental Review:** Although this Notice permits preliminary applications for Emergency Capital Needs assistance, if immediate repairs are needed to preserve the property or ensure the safety of public housing residents, environmental review provisions remain applicable. Unless the Department conducts an environmental review itself under 24 CFR Part 50, the environmental procedures in 24 CFR Part 58 apply, recognizing that the responsible entity (not the PHA) may determine that some disaster repairs are exempt from environmental review under § 58.34(a)(1). For activities that require environmental review, § 58.22 prohibits commitment of HUD or local funds, or undertaking activities that limit the choice of reasonable alternatives or have an adverse environmental impact, prior to approval of a Request for Release of Funds. Emergency provisions in § 58.33 regarding environmental reviews and combined comments period also apply. If the Department, upon request or upon the Department's determination, takes responsibility under 24 CFR Part 50 for the environmental review of activities proposed in a preliminary application, the PHA may not commence repair actions until HUD, in approving the preliminary application, completes an environmental review of the proposed activities or determines that the activities are not subject to environmental review.
- c. Process for submitting preliminary grant application:** The process to apply for a natural disaster grant begins with the PHA's local Field Office. If the Field Office finds the application approvable, the application is forwarded to Headquarters for review/approval.
- d. When and where to submit preliminary grant application:** To obtain natural disaster funds, a PHA must submit a natural disaster grant application. The PHA should note that both preliminary and final applications are approved and funded by Headquarters on a first come, first served basis. The Department recommends that the PHA submit its preliminary application as soon as the PHA has identified the costs necessary for the immediate preservation of property and the protection of the public housing residents. The preliminary natural disaster grant application must be submitted to the public housing director of the PHA's local Field Office. While it is not required, the PHA may contact the local Field Office as early as possible to alert the Field Office that it is submitting an application. However, the PHA must submit its completed application to the Field Office before its application will be placed in the funding queue.
- e. How to submit a preliminary grant application:** PHAs must scan and email all application documents and send via mail all original, signed copies of such documents. Applications will be date stamped on the day the Field Office receives the PHA's completed application via email.
- f. What to include in a preliminary application:** A preliminary application differs from a final application in that the funding will be limited to items of immediate need and the PHA only needs to provide a reasonable cost estimate of the amount of funding needed.

A preliminary grant application must include all of the following documents and forms. The PHA must submit an original and one scanned and emailed copy of the following documents.

1. Annual Statement for Disaster Grant (Form HUD-50075.1) (Only sections I and II).
 - a. Identify the public housing projects(s) affected by the natural disaster.
 - b. Identify and date of the natural disaster (e.g., hurricane, tornado, etc.).
 - c. Reasonably identify damages caused by the natural disaster and the costs necessary for the immediate preservation of property and the protection of the public housing residents.
 - i. Note, the cost to provide temporary housing to PHA residents until housing units can be repaired can be covered by the natural disaster grant (i.e. hotel costs) or the PHA's Capital Fund.
 - ii. An independent damages assessment is not required until the PHA submits the final application or reconciles the preliminary application grant via the reconciliation process.
 - d. Identify all sources of available funds (e.g., insurance proceeds, Federal assistance, etc.).
2. Certification for Contracts, Grants, Loans and Cooperative Agreements (Form HUD-50071).
3. Standard Form (SF)-LLL, Disclosure of Lobbying Activities. Note: This form is available at Forms.gov.
4. PHA Certifications of Compliance with the PHA Plans and Related Regulations (Form 50077) for "non-qualified" PHAs or the Civil Rights Certification (Form 50077-CR) for "qualified" PHAs.
 - a. To determine which form your PHA should submit, please reference Notice PIH 2008-41(HA), entitled *Public Housing Agency (PHA) Five-Year and Annual Plan Process for all PHAs*, available at <http://www.hud.gov/offices/pih/publications/notices/08/pih2008-41.pdf>.
 - ii. The Department may require the PHA to submit material(s) in addition to these documents and forms as part of the application.
- g. **Evaluation criteria for preliminary grant application:** The Department will evaluate the preliminary grant application based on the proper submission of the required

materials. The Department also confirms that the natural disaster occurred in the same FFY as the Emergency Capital Needs Funds were appropriated.

- h. Field Office review of preliminary grant application:** The Field Office evaluates the PHA's request based on the criteria listed above. If the Field Office determines it is necessary to verify the condition or the work needed to correct the damage, the Field Office may schedule an on-site review with the PHA. The Field Office completes its review of the PHA's request for funds within 14 calendar days of receipt of the application submitted via email.
 - i. Approvable application:** If the Field Office determines that the application is approvable, the Field Office forwards the application to Headquarters with the recommendation to approve the application.
 - ii. Non-approvable application:** If the Field Office determines that the application is not approvable, it will notify the PHA in writing with the reason(s) for not finding the application approvable. The PHA may appeal the Field Office's decision to Headquarters. Headquarters makes the final decision on the PHA's appeal within 14 calendar days from the receipt of the appeal.
- i. Headquarters review of preliminary grant application:** Headquarters reviews the application forwarded by the Field Office and, if necessary, confers with the Field Office as part of the review process. Headquarters completes its review process within 14 calendar days from the receipt of the request from the Field Office.
 - i. Approved application:** Headquarters approves the preliminary grant application if the application is in compliance with the criteria above and if Emergency Capital Needs Funds are available. Headquarters notifies the PHA that the application is approved and generates an ACC amendment for the funded application. Headquarters notifies the PHA's Field Office when the funds have been assigned from the Emergency Capital Needs Fund.
 - ii. Disapproved application:** Headquarters denies the preliminary grant application if the application is not in compliance with the criteria above or if Emergency Capital Needs Funds are not available. Headquarters notifies the PHA that the application is not approved within 14 days of receipt of the application.
- j. Reconciliation of preliminary grant:** If the PHA receives a preliminary natural disaster grant, the PHA must confirm to the Department the actual amounts received from other Federal sources. In addition, the PHA must provide an independent cost estimate of the disaster damage within 120 calendar days from the grant approval date. Once the Department receives confirmation of the total funds received and costs incurred as a result of the natural disaster, the Department will undertake a reconciliation to ensure that the PHA is receiving accurate funding (i.e., not receiving duplicate funding). If the insurance and/or other funding pays for all repair costs, the Department will recapture all Emergency Capital Needs funds.

- 6. HUD-Final Application Process for Non-Presidentially Declared Natural Disasters:** A PHA must submit a final application for a new disaster grant, or when additional funds are requested after a preliminary grant has been approved. Final natural disaster grant applications must be submitted with all the required documentation listed below.
- a. When and where to submit final grant application:** Applications, both final and preliminary, are approved and funded on a first come, first served basis. The PHA submits its final natural disaster grant application to the public housing director in the PHA's local Field Office.
 - b. How to submit a final grant application:** PHA's must scan and email all application documents and send via mail all original, signed copies of such documents. Applications will be date stamped on the day the Field Office receives the PHA's completed application via email. While not required, the PHA may contact the local Field Office as early as possible to alert the Field Office that it is submitting an application. However, the PHA must submit its completed application to the Field Office before its application will be placed in the queue.
 - c. What to include in the final grant application:** A final application for a natural disaster grant must include the following documents and forms.
 - i.** A detailed description of the natural disaster, when the preliminary application was submitted and approved (if applicable), and the amount of total funding (if the PHA did not submit an approved preliminary application) or additional funding (if the PHA did submit an approved preliminary application) requested.
 - ii.** An original and one scanned and emailed copy of the following documents. Copies of the forms are available at <http://www.hudclips.org>.
 - 1.** Annual Statement for Disaster Grant (Form HUD-50075.1) (Only sections I and II).
 - a.** Identify the public housing projects(s) affected by the natural disaster.
 - b.** Identify and date of the natural disaster (e.g., hurricane, tornado, etc.).
 - c.** Describe the activities that will be undertaken to correct the conditions caused by the natural disaster and the estimated cost.
 - d.** Provide an independent assessment of the extent of the damage and the cost to correct the condition. The assessment must be specific as to the damage and costs associated with the natural disaster.
 - e.** Identify all sources of available funds (e.g., insurance proceeds, Federal assistance, etc.).

2. Certification for Contracts, Grants, Loans and Cooperative Agreements (Form HUD-50071).
 3. Standard Form (SF)-LLL, Disclosure of Lobbying Activities. Note: This form is available at Forms.gov.
 4. PHA Certifications of Compliance with the PHA Plans and Related Regulations (Form 50077) for “non-qualified” PHAs or the Civil Rights Certification (Form 50077-CR) for “qualified” PHAs.
 - a. To determine which form your PHA should submit, please reference Notice PIH 2008-41(HA), entitled *Public Housing Agency (PHA) Five-Year and Annual Plan Process for all PHAs*, available at <http://www.hud.gov/offices/pih/publications/notices/08/pih2008-41.pdf> .
 5. Provide a copy of the HUD Declaration of Trust(s) (DOT) on the affected property with an opinion of counsel that the DOT is current, will remain effective for 20 additional years and there are no encumbrances on the property.
- iii. The Department may require the PHA to submit material(s) in addition to these documents and forms as part of the application.
 - iv. Note: There are no resident or local government consultation requirements or public hearing requirements to receive funding from the Emergency Capital Needs Fund because of the PHA’s need to submit its application quickly. However, the PHA is urged to consult with residents and local government officials. The PHA is required to inform residents and local government officials of any approved natural disaster funding. Moreover, public notice requirements associated with environmental reviews under 24 CFR Part 58 or Part 50 are applicable to activities assisted with the Emergency Capital Needs Fund, except where the responsible entity determines that an activity is exempt under 24 CFR 58.34 or not subject to review under 24 CFR 58.35(b) or the Department determines that an activity is not subject to environmental review under 24 CFR 50.19.
- d. **Evaluation criteria for final grant application:** The Department will evaluate the final grant application based on the proper submission of the required materials above. The Department also confirms that the natural disaster occurred in the same FFY as the Emergency Capital Needs Funds were appropriated.
7. **Field Office review of final grant application:** The Field Office evaluates the PHA's request for funds based on the criteria above. If the Field Office determines it is necessary to verify the condition or the work needed to correct the condition, the Field Office may schedule an on-site review with the PHA. The Field Office completes its review of the PHA’s request for funds within 14 calendar days of receipt of the application submitted via email.

- i. **Approvable application:** If the Field Office determines that the application is approvable, the Field Office forwards the application to Headquarters with the recommendation to approve the application.
 - ii. **Non-approvable application:** If the Field Office determines that the application is not approvable, it will notify the PHA in writing with the reason(s) for not finding the application approvable. The PHA may appeal the Field Office's decision to Headquarters. Headquarters makes the final decision on the PHA's appeal within 14 calendar days from the receipt of the appeal.
- 8. Headquarters review of final grant application:** Headquarters reviews the final grant application forwarded by the Field Office and, if necessary, confers with the Field Office as part of the review process.
 - i. **Approved application:** The PHA's application is approved if Headquarters reviews the application and finds it in compliance with the criteria above and if Emergency Capital Needs Funds are available. Headquarters notifies the PHA that the application is approved and generates an ACC amendment for the funded application. Headquarters notifies the PHA's Field Office when the funds have been assigned from the Emergency Capital Needs Fund.
 - ii. **Disapproved application:** The PHA's application is denied if Headquarters determines that the application is not in compliance with the criteria above or if Emergency Capital Needs Funds are not available. Headquarters notifies the PHA that the application is not approved within 14 days of receipt of the application.
- 9. FEMA-The Stafford Act:** The repeal of Section 9(k) of the United States Housing Act of 1937 clarifies that "public housing capital funds [previously provided for under Section 9(k)] cannot be used to pay for the repair of public housing damaged in Presidentially declared disasters." *See*, Senate Report 111-069 – Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill, 2010.. Thus, funding under Section 406 of the Stafford Act is now available to PHAs to restore eligible facilities that have sustained damage due to a Presidentially declared disaster, as well as to fund additional measures that will enhance a facility's ability to resist similar damage in future events. . The repeal of Section 9(k) has had no effect on FEMA's authority under Section 403 of the Stafford Act to provide essential, emergency assistance to PHAs, Indian tribes, and tribally designating housing entities that suffer damage from natural disasters regardless of whether or not the disaster was Presidentially declared. This assistance may include debris removal, demolition of unsafe structures, and any actions necessary to reduce an immediate threat to life, property, and public health and safety. *See* <http://www.disastersrus.org/FEMA/Stafact.htm>. Like PHAs, Indian tribes and tribally designated housing entities may apply directly to FEMA for disaster assistance.

10. Contact Information:

a. HUD

i. General Questions:

Please contact Jeffrey Riddel, Director, at (202) 402-1640. **Application:**
The Field Office should email all application materials to PIHOI@hud.gov.

b. FEMA:

i. General Questions

FEMA-Correspondence-Unit@dhs.gov

Telephone: 1 (800) 621-FEMA (3362)

TDD: TTY users can dial 1 (800) 462-7585 to use the Federal Relay Service.

Fax: 1 (800) 827-8112

ii. Technical Assistance (Online Registration)

Telephone: 1 (800) 745-0243

Fax: 1 (800) 827-8112

/s/

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