



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

Special Attention:

NOTICE PIH 2012-41 (HA)

Public Housing Agencies
Public Housing Directors

Issued: September 28, 2012

Expires: This notice remains in effect until amended, revoked, or superseded.

Subject: Processing Information for the Submission of Replacement Housing Factor (RHF) Plans

I. Applicability: This Notice applies to public housing agencies (PHAs) who are currently receiving or expect to receive Replacement Housing Factor (RHF) grants (also referred to in this Notice as “RHF funds,” especially when referring to more than one year of RHF funding). This Notice supersedes guidance previously issued on the submission of RHF Plans contained in PIH Notices 2003-10, 2004-15 and 2005-22.

II. Purpose: This Notice provides processing information for PHAs regarding the submission of a streamlined RHF Plan. By following these processing instructions, a PHA will meet the requirements of section 9(j) of the U.S. Housing Act of 1937, as amended (the Act) and 24 CFR parts 905 and 941. A PHA must communicate the following information to HUD:

- The PHA’s intent to accumulate RHF funds for 2, 3, 4, or 5 consecutive years because the funds received in one year are insufficient to conduct meaningful development;
- The PHA’s commitment to use RHF funds for the development of public housing rental (ACC) units; and
- The PHA’s acknowledgement/recognition that RHF funds are subject to section 9(j) of the Act and 24 CFR 905.120 regarding the timely obligation and expenditure of funds.

PHAs are no longer required to identify the development where RHF funds are going to be used, nor are they required to include the milestones that are part of the development process. **However, it is a PHA’s responsibility to submit an approvable development proposal to HUD and to ensure that it is using its RHF funds towards development or acquisition with a schedule that is consistent with the established statutory and regulatory obligation deadlines.** Extensions to the obligation deadlines can only be granted under limited criteria established by Section 9(j) of the Act and its implementing

regulations. Extensions to obligation deadlines will be granted only when the PHA meets one of the limited criteria established in the Act, and not merely because a PHA has chosen to use its RHF funds towards development with a schedule that will not enable funds to be obligated and expended within established deadlines.

III. Definitions:

RHF Funds: Capital Fund Grants that are awarded for the sole purpose of developing new public housing rental units to PHAs that have removed units from inventory.

First Increment Funding: A PHA automatically receives five years of RHF funding the *year* after units approved for demolition or disposition have been removed from the public housing inventory and the PHA reports the removal in PIC.

Second Increment Funding: A PHA is eligible for another five years of RHF funding, but the funding is not automatic. In order to receive an additional (or second) five years of RHF funding, the PHA must apply (submit a second increment RHF Plan or revision for HUD approval) every time it is eligible.

IV. Background: The Capital Fund formula rule at 24 CFR 905.10(i) provides that a PHA may receive RHF grants for up to five years, for public housing units demolished or sold under Section 18 of the U.S. Housing Act of 1937 (the Act). A PHA may only be given RHF funding for public housing units that have not already been funded for replacement public housing units under public housing development, Major Reconstruction of Obsolete Public Housing (MROP), HOPE VI, Choice Neighborhoods, or any other programs that would otherwise provide replacement housing. **A PHA must report the units as removed from inventory in the PIC system before it will receive RHF funding.**

A PHA may only use RHF grants to develop or acquire public housing rental units and to pay for costs normally associated with development such as architectural and engineering fees and environmental tests. All replacement housing must be undertaken in accordance with public housing development regulations found at 24 CFR Part 941, which includes requirements for mixed-finance development.

A PHA must submit an RHF Plan when it wishes to accumulate one or more years of its first increment RHF funds before using them for development. PHAs can accumulate 2, 3, 4 or 5 consecutive years of RHF first increment funding. Without a HUD-approved RHF Plan, the PHA has no authority to accumulate RHF first increment funding.

A PHA is eligible for another five years of second increment RHF funding, but the funding is not automatic. In order to receive an additional (or second) five years of RHF funding, the PHA must apply when it becomes eligible for second increment funding. A PHA already receiving second increment funding must either submit a new RHF plan or submit a revised RHF plan whenever it becomes eligible for a new tier of second

increment funding. If the PHA does not apply for this second increment funding or fails to meet the requirements for second increment RHF funding, then the PHA becomes ineligible for the entire five years of second increment RHF funding associated with a particular demolition and/or disposition application.

A PHA may use first and second increment funding in the same development. However, the PHA must submit separate RHF Plans for its first and second increments of RHF funding.

Previously, an RHF Plan provided a description of the steps that a PHA proposed to carry out to provide replacement housing. RHF Plans have now been streamlined as described in this Notice.

Additional guidance regarding RHF funding can be found at:
<http://www.hud.gov/offices/pih/programs/ph/capfund/rhf.cfm>

V. Streamlined RHF Plan Submission Guidelines

A. Preparing and Submitting the First Increment RHF Plan

For First Increment RHF grants: If a PHA plans to accumulate its RHF funds for 2,3,4, or 5 consecutive fiscal years and establish a later obligation start date, it must submit an RHF Plan to HUD for approval as described below. **For First Increment RHF grants,** if a PHA fails to submit an RHF Plan, the obligation start date of the RHF grant will automatically be 24 months from the date that the funds became available for each year of RHF funding. If the RHF Plan is submitted and approved, the alternate obligation and expenditure deadlines will be subsequently established based upon the final year of funds included in the accumulation.

RHF Plans can be submitted any time from the award of an RHF grant up to 90 days prior to the date of the initial 24 month obligation deadline established for the first RHF grant included in the RHF Plan for accumulation. For example, in an instance where a PHA proposes in its first increment RHF Plan to accumulate RHF grants for FY 2008 to 2012, the PHA would need to submit its First Increment Plan for these grants 90 days prior to the obligation deadline for the FY 2008 RHF grant, which is 6/12/2010 (as the obligation deadline for the FY 2008 funds is 9/12/2010). The latest possible date to submit an RHF Plan for accumulation including a specific RHF grant will be posted at the Capital Fund webpage. PHAs are encouraged to submit RHF Plans shortly after receipt of their first RHF grant.

The first increment RHF Plan must specify:

1. The PHA intends to accumulate its RHF grants for up to five consecutive years and establish a later obligation deadline, and the reason(s) why it needs to do so (i.e. because the funds will be used in a multi-phase development).
2. The number of years of grants the PHA is accumulating (up to five years).

3. The grants, including estimated amounts, by fiscal year (and grant number if known) the PHA is accumulating, including any expected future years of funding.
4. The PHA is using the funds consistent with the terms of RHF -- the development of public housing ACC units, or the acquisition of land and/or buildings for the purpose of developing public housing ACC units, in accordance with 24 CFR part 941.
5. The PHA must revise its RHF Plan if any factor that affects its RHF funding causes RHF funding to end earlier than anticipated. If the RHF funds end earlier than expected, the obligation end date will be affected because not as many years of funding will be accumulated.

See Attachment A, Model RHF Plan Submission for an example.

RHF Plans cannot:

- include a grant (for accumulation) already included in another approved RHF Plan;
- accumulate more than five consecutive federal fiscal years, or
- mix increments of RHF funding. (First increment plans can only include first increment grants and second increment plans can only include second increment grants. However, a PHA may use first and second increment funding in the same development.)

Note: Because many PHAs have multiple demolition and/or disposition application approvals and demolition and disposition activities occur over many years, and RHF funding is awarded based on approved demolition and/or disposition applications, PHAs may receive more than five years of first increment funding. In fact, there are PHAs that have been receiving first increment RHF grants since 1998. Therefore a PHA may need to have more than one first increment RHF Plan on file to cover all the grants.

HUD Approval of the First Increment RHF Plan

RHF Plans and revisions are submitted to the local HUD Field Office. HUD will review first increment RHF Plans to determine if they meet the requirements set out above. If the Field Office finds that the RHF Plan meets the stated requirements, the Field Office will approve the RHF Plan in writing and update the RHF data collection tool so that the alternate obligation and expenditure deadlines can be set in the Line of Control System (LOCCS).

If the RHF Plan is not approved, the Field Office will notify the PHA of the RHF Plan deficiencies. If the RHF Plan for first increment RHF grants is still not approvable, for the first increment RHF grants the obligation end date will be 24 months from the date funds were made available for each year of the RHF funding.

B. First Increment RHF Plan Revisions

With the switch to a more streamlined RHF Plan model, revisions to RHF Plans are only needed in cases where a PHA needs to change the grants that are being accumulated. This could be from a sudden increase, decrease or ending of RHF funding, or to take advantage of the full five years of accumulation if a lesser number of years were in the current plan.

The PHA must follow the instructions described in the first increment plan preparation and submittal process described earlier in this guidance. In addition, the PHA must:

- indicate the RHF plan that is being revised, by increment and approval date, and
- describe the impact of changing the grants that are being accumulated.

Revisions to first increment RHF Plans previously approved by HUD must be submitted to the local HUD Field Office whenever the PHA proposes a change to its plans to accumulate funding. Revisions to RHF Plans may also trigger changes to the Annual and Five Year Plan, as well as the Capital Fund Five-Year Action Plan and Capital Fund Annual Statement.

C. Preparing and submitting the Second Increment RHF Plan

Second Increment RHF eligibility: RHF Plans must be submitted prior to the award of a new tier Second Increment funding. A list of PHAs eligible for new second increment RHF funding, a deadline for submitting a second increment RHF Plan and other instructions for submission are posted at the Capital Fund webpage prior to the award of the Capital Fund every fiscal year.

If the PHA fails to submit a Second Increment RHF Plan, the funds for the entire five years (i.e., the second increment) will not be awarded, and the PHA is no longer eligible for any associated future RHF funds associated with that particular demolition and/or disposition application. The ACC amendment for the current year's second increment RHF grant will not be executed, the grant will be de-reserved and the affected units will become ineligible for further RHF funding.

A PHA must submit a separate RHF Plan for its first and second increments of RHF funding. However, a PHA may use first and second increment funding in the same development. The second increment RHF Plan **MUST** be submitted in accordance with the schedule posted on the Capital Fund webpage.

A second increment RHF Plan must specify:

1. The PHA intends to accumulate its RHF grants for up to five consecutive years and establish a later obligation deadline, and the reason(s) why it needs to do so (i.e. because the funds will be used in a multi-phase development).
2. The number of years of grants the PHA is accumulating (up to five years)
3. The grants, including estimated amounts, by fiscal year (and grant number if known) the PHA is accumulating, including any expected future years of funding.
4. The PHA is using the funds consistent with the terms of RHF -- the development of public housing ACC units, or the acquisition of land and/or buildings for the purpose of developing public housing ACC units, in accordance with 24 CFR Part 941.
5. The PHA must revise its RHF Plan if any factor that affects its RHF funding causes RHF funding to end earlier than anticipated. If the RHF funding ends earlier than expected, the obligation end date will be affected because not as many years of funding will be accumulated.
6. A statement confirming that the Capital Fund Five Year Action Plan and Capital Fund Annual Statement have been approved.
7. A statement confirming that its Annual Plan (if applicable) has been approved.
8. A statement affirming compliance with obligation and expenditure deadlines for all Capital Fund grants.
9. Proof of firm financial commitment(s) for substantial additional funds, other than public housing funds, equaling at least one-third of the total RHF funds it will receive in the second five year increment. If the PHA does not demonstrate a firm commitment at the time of the second increment RHF Plan submission, the local HUD Field Office will issue an approval contingent upon securing the funds prior to the submission of the development proposal, and will suspend the second increment grants until such a time that the PHA demonstrates the financial commitment through submission of a revised plan. These funds must be firmly committed prior to the approval of the development proposal or mixed finance proposal.

See Attachment A, Model RHF Plan Submission for an example.

RHF Plans cannot:

- include a grant (for accumulation) already included in another approved RHF Plan;
- mix increments of RHF funding, or
- accumulate more than five consecutive federal fiscal years.

First increment plans can only include first increment grants and second increment plans can only include second increment grants. For second increment grants only, the leveraging will change whenever there is a change in the grant total.

Leverage for Second Increment RHF funding

In accordance with HUD regulations at 24 CFR 905.10(i)(2)(ii), as a prior condition of a PHA's receipt of the second increment of RHF funding, a PHA must obtain a commitment of substantial additional funds, other than public housing funds, for replacement housing, as determined by HUD. This standard is met where a PHA leverages an amount of non-public housing funds equal to at least equal one-third of the total RHF funds in the second five-year increment.

HUD realizes that at the beginning the development process the PHA may not have a final determination of leverage. A PHA must provide as much information as possible regarding its plans to leverage. PHAs must use funds other than public housing funds for leveraging. Examples include the following: Community Development Block Grant (CDBG) funds, tax credits, State or local grants, private mortgage-secured loans and other debt, donations and contributions, and housing trust funds.

In addition, leveraging may include funds borrowed by the PHA through such sources as bank loans and bond issuances (through the Capital Fund Financing Program (CFFP)) that are to be repaid with RHF funds. When borrowing funds, a PHA may pledge up to 100 percent of the RHF funds towards payment of debt service. For reference, HUD has typically permitted PHAs to pledge up to one-third of their annual Capital Fund grants for financing. Headquarters must approve any pledge of RHF funds or other Capital Funds by a PHA.

A PHA may not count leverage from a previous transaction involving RHF funds in determining the required leverage for a new transaction. For example, if a PHA had leverage in excess of 33% in a previous transaction that used second increment funds, it may not count the amount above 33% in the previous transaction towards the requirement of leverage in a new transaction. Or, if a PHA had any leverage in a previous transaction which used first increment funds but did not use second increment funds, the PHA may not include that leveraged amount as credit towards the requirement of leverage in a new transaction that will use second increment funds.

A PHA must prepare a separate RHF Plan for the first and the second increments of funding, but a PHA may submit first and second increment RHF plans together. However, a PHA may use first and second increment funding in the same development.

Note: Because many PHAs have multiple demolition and/or disposition application approvals and demolition and disposition activities occur over many years, and RHF funding is awarded based on approved demolition and/or disposition applications, PHAs may receive more than five years of first increment funding. In fact, there are PHAs that have been receiving first increment RHF grants since 1998. Therefore a PHA may need to have more than one first increment RHF Plan on file to cover all the grants.

HUD Approval of the second increment RHF Plan

RHF Plans and revisions are submitted to the local HUD Field Office. HUD will review second increment RHF Plans to determine if they meet the requirements. If the Field Office finds that the RHF Plan meets the requirements, the Field Office will approve the Plan in writing. As stated earlier, if the PHA does not demonstrate a firm commitment of leverage at the time of the second increment RHF Plan submission, the local HUD Field Office will issue an approval contingent upon securing the funds prior to the submission of the development proposal, and will suspend the second increment grants until such a time that the PHA demonstrates a firm financial commitment through submission of a revised plan. These funds must be firmly committed prior to the approval of the development proposal or mixed finance proposal.

If not approved, the Field Office will notify the PHA of the RHF Plan deficiencies. For second increment RHF grants; PHA revision of the Plan to correct deficiencies must be received within 60 days. If the RHF Plan is still not approvable, the second increment RHF grant funds will be recaptured and the PHA will be ineligible for further second increment RHF funding for the specific set of units.

Second Increment RHF Plan Revisions: Revisions to RHF Plans are only needed in cases where a PHA needs to change the grants that are being accumulated. This could be from a sudden increase, decrease or ending of RHF funding, or to take advantage of the full five years of accumulation if a lesser number of years were in the current plan, or to demonstrate a firm financial commitment for leveraging.

The PHA must follow the second increment plan preparation and submittal process described earlier in this Notice. In addition the PHA must:

- indicate the RHF Plan that is being revised, by increment and approval date;
- describe the impact of changing the accumulated grants, and
- describe any changes or updates to the financial commitments (needed to meet the leveraging requirements).

Revisions to second increment RHF Plans previously approved by HUD must be submitted to the local HUD Field Office when there is a change to the PHA's plans to accumulate funding. Revisions to the RHF Plan may also trigger changes to the Annual or Five Year Plan, as well as the Capital Fund Five Year Action Plan and Capital Fund Annual Statement.

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