

CAPITAL FUND PROCESSING GUIDANCE FOR FY 2021 GRANT AWARDS

This notice provides Public Housing Agencies (PHAs) with guidance on the Capital Fund Program (CFP) Award process for Fiscal Year (FY) 2021. The Department of Housing and Urban Development (HUD) will send each PHA receiving Capital Funds an email (based on the address in the Public Housing Information Center (PIC) system) notifying the PHA of the award of a CFP Grant. PHAs are responsible for maintaining the correct contact information, including the correct email address for the Executive Director, in PIC.

FY 2021 Capital Fund ACC Amendment:

FY 2021 Capital Fund ACC Amendments will be transmitted to each PHA as an e-mail attachment. HUD will post a master ACC Amendment signed by the Deputy Assistant Secretary (DAS) for the Office Public Housing Investments (OPHI) fulfilling the requirement for a HUD signature on the ACC Amendment under the 2021 Capital Fund Processing link (https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund/processing). In previous years, OCI did not obligate the awards in LOCCS until after the ACC Amendments were executed. For FY 2021, HUD's Office of Capital Improvements (OCI) will obligate CFP awards in LOCCS up-front based on the DAS for OPHI's signature for all agencies with active Dun & Bradstreet Numbers (DUNS) and Tax Identification Numbers (TINS). The funds will be held on the reserve Budget Line Item (BLI 0100) in HUD's electronic Line of Credit Control System (LOCCS) and will not be available for draw-down until the PHA has submitted the necessary forms to HUD including a signed ACC Amendment by the PHA, received HUD approval, and submitted an Annual Statement/Budget for the award in HUD's Energy and Performance Information Center (EPIC) system. The ACC Amendment sent to PHAs will indicate that HUD has signed the ACC Amendment by putting “/ s /” in the HUD signature block.

PHAs will sign the ACC Amendment with a physical signature by a person authorized to enter into agreements for the PHA. PHAs are prohibited by a provision in HUD's Appropriation Act for FY 2021 from signing ACC Amendments electronically. PHAs will submit signed ACC Amendments and other required Forms electronically. **In mid-March, PHAs will receive detailed instructions on how to electronically submit required documents most likely using new functionality in EPIC that will allow PHAs to upload Capital Fund submission documents.** Only after electronic submission of the document package and approval by the Field Office will PHAs be able to submit an Annual Statement/Budget for the award and access the funds.

Energy and Performance Information Center (EPIC):

For FY 2021 CFP awards, all PHAs are required to submit a CFP 5-Year Action Plan that covers 2021 in EPIC. A 5-Year Action Plan will be either Fixed or Rolling.

Rolling 5-Year Action Plans: Covers a rolling, five-year period. Annually a new plan is created, removing the oldest year and adding on an additional year.

- For example, a PHA with a Rolling Plan is currently operating under a plan covering 2020 through 2024. The PHA would use the copy forward function to create a new

CFP 5-Year Action Plan in EPIC. EPIC will automatically create a plan with a starting year of 2021, and the PHA will create and/or edit information on work activities for 2021 through 2025.

Fixed 5-Year Action Plans: Covers a static, five-year period. At the conclusion of this period, a new plan is created covering the next five-year period.

- For example, suppose a PHA is currently operating under a Fixed CFP 5-Year Action Plan for 2020 through 2024. The PHA would not be required to submit a new CFP 5-Year Action Plan in EPIC for the FY 2021 CFP award, but would revise the existing plan as needed to reflect changes. PHAs are still required to provide proof of board approval and certifications of compliance with annual hearing procedures.

PHAs will use the approved 5-Year Action Plan as the basis for their 2021 Annual Statements/Budgets. Field Offices (FOs) review and approve or withhold approval, as appropriate, 5-Year Action Plans in EPIC. PHAs with an approved 5-Year Action Plan in EPIC may revise amounts to reflect actual awards and may use fungibility as defined in 24 CFR 905.108, or reschedule, approved activities from one year to another without seeking additional HUD FO approval. PHAs using fungibility or rescheduling work activities should remain in compliance with statutory and regulatory requirements for obligations and expenditures. Once the FO has approved a CFP 5-Year Action Plan in EPIC a PHA may then continue to modify the plan to reflect changing circumstances and decisions: while many modifications, such as adjusting estimated amounts, do not require additional FO approval, other changes, such as the addition of new work activities, will require FO review and approval in EPIC. Such changes will trigger a Revision in the system.

See PIH Notice 2016-21 for more information on EPIC. The notice is available at:
<https://www.hud.gov/sites/documents/PIH-2016-21.PDF>

In order to spread or re-spread BLIs in LOCCS, PHAs submit an Annual Statement/Budget or Annual Statement/Budget Revision in EPIC: LOCCS will be updated to reflect the changes within a few business days without any action on the part of Field Offices. EPIC may prevent the submission of Annual Statements/Budgets that do not comply with all requirements, including ceilings on certain BLIs and restrictions on the use of BLIs specific to debt service and to the Rental Assistance Demonstration (RAD). PHAs should continually update Annual Statements/Budgets in EPIC to reflect the planned spending on specific work items as needed, even if the work categories fall under the same BLI. PHAs should submit a final Annual Statement/Budget or Performance and Evaluation Report reflecting final expenditure amounts and Work Activities and select the “Mark as Final” option when they have expended all of the grant funds they intend to expend on a grant.

Pre-Submission Details:

Board Resolution Required on File. PHAs are required to have on file a copy of a board resolution approving the PHA’s CFP 5-Year Action Plan (submitted in the EPIC system). If a PHA has not held a board meeting on the CFP 5-Year Action Plan that includes FY 2021 at the time the CFP grants are awarded, it may use the public hearing and board resolution from its

most recent approved CFP 5-Year Action Plan; however, the PHA is not permitted to use Capital Funds for new work items that were not included in the previous CFP 5-Year Action Plan until the CFP 5-Year Action Plan for FY 2021 Capital Fund grants is approved by the board.

Please note that even though PHAs are permitted to use a board resolution from a previous CFP 5-Year Action Plan, all PHAs must submit a CFP 5-Year Action Plan that covers FY 2021.

PHAs Rejecting a Capital Fund Grant. If a PHA elects to reject any CFP grant(s), the Executive Director must send a written statement to the local HUD FO which identifies the grant number(s) and dollar amount(s) of the grant(s) to be rejected.

PHAs are required to have on file a resolution from the board rejecting the CFP grant(s) for the fiscal year.

Management Improvements Cost Limits and Eligible Items. As indicated in 24 CFR 905.315(i), the FY 2021 limit for Capital Funds budgeted to BLI 1408-Management Improvements will be 10%. Please review the eligible Management Improvements activities in 24 CFR section 905.200(b)(7) to ensure that your PHA's planned activities are eligible for inclusion under this BLI. In order to fund Management Improvements with Capital Funds, a PHA must be able to demonstrate, upon request by HUD, the linkage between the Management Improvement and the correction of an identified management deficiency, including sustaining the physical improvements.

Updated SAM registration/DUNS Number. The DUNS registration in the System for Award Management (SAM) is a requirement to receive federal awards, and the registration must be active. If you have an expired registration in SAM or there is a discrepancy between your DUNS number and your Tax Identification Number (TIN), your FY 2021 CFP grant will not be obligated/awarded until the registration is updated. Contact your Field Office for assistance with resolving SAM/DUNS number issues. Once the DUNS registration is updated HUD will obligate the funds and issue an ACC Amendment once all requirements have been met. Please note that the obligation end date of the FY 2021 grant will remain the same, so PHAs with expired DUNS numbers will have less than 2 years to obligate the funds.

PHA Submission Requirements:

5-Year Action Plan Approved in EPIC. To be authorized to spend FY 2021 CFP Grants, PHAs must have a CFP 5-Year Action Plan that includes FY 2021 approved in EPIC.

Written Statement Defining Significant Amendment/Modification. Each PHA must submit a written statement defining the criteria the PHA will use for determining a significant amendment or modification to the CFP 5-Year Action Plan. In addition to the criteria established by the PHA, a proposed demolition, disposition, homeownership, RAD conversion, Capital Fund Financing, development, or mixed finance proposal is considered by HUD to be

significant amendment to the CFP 5-Year Action Plan based on the Capital Fund Final Rule. This must be submitted as a separate written statement.

Public Hearing Requirement. PHAs are encouraged to combine the Capital Fund submission hearing with the PHA Plan hearing. If a PHA has not yet submitted its PHA plan for FY 2021 and has not held a public hearing, it may use its most recent public hearing from the PHA plan or CFP 5-Year Action Plan process. However, the PHA must conduct a public hearing to cover the new work activities proposed for the 2021 grant(s) (typically incorporated in the PHA Plan Process) before it can use Capital Funds for those work items. The PHA can continue to perform work items in the previous year's approved CFP 5-Year Action Plan.

Civil Rights Certification and Lobbying Form SFLLL. If the PHA has already submitted a HUD-50077-ST-HCV-HP or HUD-50077-CR and the SFLLL with its PHA Plan for FY 2021, a copy of the document can be submitted.

Required Certification Forms.

As applicable, PHAs must submit the following to HUD:

- Lobbying Form - SFLLL
- Certification of Compliance w/Public Hearing: (PHA must have a copy of one of the following.)
 - Non-Qualified PHAs* - HUD form HUD-50077-ST-HCV-HP includes this certification
 Y / N Was the public hearing conducted in FY 2021
 - Qualified PHAs* - A statement certifying that the PHA conducted a public hearing in compliance with 24 CFR Part 905, signed and dated by the executive director.
 Y / N Was the public hearing conducted in FY 2021
- HUD form 50071, Certification of Payments to Influence Federal Transactions
- Civil Rights Certification: (PHA must have a copy of one of the following.)
 - Non-Qualified PHAs* - HUD form HUD-50077-ST-HCV-HP
 - Qualified PHAs* - HUD form HUD-50077-CR

Additional Information Regarding the FY 2021 Capital Fund Grants:

CARES Act Waivers, Extensions, and Administrative Flexibilities. The Coronavirus Aid, Relief and Economic Security (CARES) Act (Public Law 116-136) provided the U.S. Department of Housing and Urban Development (HUD) with broad authority to waive or establish alternative requirements for numerous statutory and regulatory requirements for the Public Housing program.

The waivers and flexibilities provided under the authority of the CARES Act were only applicable to *previously appropriated* Capital Funds, and therefore, do not apply to FY 2021 CFP grants. FY 2021 CFP grants are also not eligible to be used for activities authorized under BLI 1509 "Coronavirus."

Reimbursement of CFP Eligible Activities Funded with other Sources. PHAs are not permitted to use any amount of a CFP grant to reimburse itself for eligible Capital Fund activities that were funded from another source. All Capital Fund obligations, expenditures, and disbursements must be recorded to the grant.

One of the reasons to prohibit paying from a non-CFP account and then reimbursing the CFP (if in fact it was CF eligible work) is that this could involve Anti-Deficiency Act violations. The Anti-Deficiency Act prohibits federal agencies from obligating or expending federal funds in advance or in excess of an appropriation, and from accepting voluntary services. A deficiency with no legal authority to pay with Capital Funds, and reimbursing at a later time, does not cure the Anti-Deficiency violation.

These transactions could also be an illegal augmentation of appropriations. An agency may not augment its appropriation from, or transfer funds to, sources external to the appropriation per se without specific statutory authority. The objective of the rule against augmentation of appropriations is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity.

Additionally, a reimbursing procedure could be the result of a merging of grant accounts (e.g., Operating Fund and Capital Fund) and lead to ineligible uses. The only exception to reimbursement is if our CFP appropriation would allow cost reimbursement/indemnity or revolving fund (it never has).

Notification of Closeout or Future Public Housing Development (HUD-5837). This form is notification to HUD of a PHA's intention to either closeout from the public housing program or develop new public housing units. Such removal may be through any available law or HUD program, which may include Sections 18, 22, 32, or 33 of the U.S. Housing Act of 1937 (1937 Act) or the Rental Assistance Demonstration (RAD) program).

Physical Needs Assessment. In accordance with Division L, Title II, Section 222 of The Further Consolidated Appropriations Act, 2021, HUD cannot utilize 2021 HUD Appropriations to require or enforce a PNA requirement. Due to industry best practices and fiscal efficiencies, HUD is still encouraging PHAs to complete a PNA every 5 years as part of their strategic planning process. HUD has made available PNA tools and resources and continues to encourage voluntary submissions of PNAs to the Capital Programs Division. For further information see,

https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund/physicalassessment or email hudpna@hud.gov

Flexibility for Capital Fund Amounts. Starting with FY 2015 (including FY 2021) CFP awards, the limitation on Capital Funds used for Operating Fund eligible activities described in section 9(g)(1) of the 1937 Act is increased from 20% to 25%, as identified in paragraph 2 of the 2021 CFP ACC Amendment. Small PHAs (those owning/operating less than 250 units) may continue to use the full flexibility provided for in section 9(g)(2) of the 1937 Act. Please note the following:

- A PHA with 250 or more public housing units may use no more than 25% of its FY 2021 CFP grant for activities that are eligible under the Operating Fund at 24 CFR Part 990.
- A PHA with less than 250 public housing units, that is not designated as troubled under PHAS, may continue to use up to 100% of its annual CFP grant for activities that are eligible under the Operating Fund at 24 CFR Part 990, except that the PHA must have determined that there are no debt service payments, significant Capital Fund needs, or emergency needs that must be met prior to transferring 100% of its Capital Funds to Operating Fund purposes. [24 CFR § 905.314(1)]
- A PHA may use Capital Funds for Operating Fund eligible activities only if such use is included in the CFP 5-Year Action Plan that is approved by the PHA Board and HUD. If a PHA's CFP 5-Year Action Plan does not permit the use of Capital Funds for Operating Fund purposes or the Plan limits such transfer to a lesser amount than allowed and desired by the PHA for use, a PHA may amend or modify its CFP 5-Year Action Plan after its submission to HUD.

However, the PHA will need to determine if such amendment or modification to its Plan is a significant amendment based on the criteria established by the PHA in accordance with 24 CFR 905.300(b)(1)(iii). If such amendment is a significant amendment, the PHA must ensure that it complies with 24 CFR 905.300(b)(1)(v)(A)—i.e., the PHA's Board adopted the amendment at a public meeting and the amendment is approved by HUD. If such modification is not a significant amendment/modification, the PHA may submit the amended CFP 5-Year Action Plan to HUD for approval.

- Capital Funds identified in the CFP 5-Year Action Plan to be placed onto BLI 1406 Operations are obligated once the funds have been budgeted and **drawn down** by the PHA.
- Once a PHA places Capital Funds onto BLI 1406 Operations, the PHA must follow the requirements of 24 CFR 990 with respect to those funds.

Waiver for Anticrime and Antidrug Activities for Large PHAs (those owning/operating 250 or more public housing units). As noted above, for FY 2021 the limitation in section 9(g)(1) of the 1937 Act is increased from 20% to 25%, as it was in FY 2015, FY 2016, FY 2017, FY 2018, and FY 2019. For FY 2021 the Secretary may waive this limitation to allow PHAs to fund activities authorized under section 9(e)(1)(C) of the 1937 Act.

Section 9(e)(1)(C) provides that PHAs may use Operating Funds for anticrime and antidrug activities, including the costs of providing adequate security for public housing residents, including above-baseline police service agreements.

Large PHAs seeking to place more than 25% of FY 2021 Capital Funds onto 1406 Operations for anticrime and antidrug activities ONLY must request a waiver in writing addressed to the Director of the Office of Capital Improvements, 451 7th St. SW, Washington, DC 20410, and the local field office. The Office of Capital Improvements will process these requests and provide a response within 14 days of the date of submission. Waiver requests will be granted at

HUD's discretion and for good cause. A good cause determination is made on a case-by-case basis and is dependent upon the adequacy of the documentation provided by the PHA seeking a waiver.

The PHA *must* provide the following information and documentation along with its waiver request:

In thorough and concise narrative form,

- Identify the amount above 25% of the FY 2021 CFP award both in dollars and by percentage the PHA seeks to transfer to BLI 1406 Operations
- Identify and describe the threat that crime and drug-related activity poses to health and safety of PHA's public housing residents
 - Describe whether this is a new threat, ongoing, or increased threat
 - Include the most recent crime data of the PHA's locality (i.e., town, city, parish, or county) from a recognized source such as local law enforcement or Uniform Crime Reports that lists types and numbers of offences (may include as an attachment)
- Identify the applicable development(s)
- Identify and describe the specific anticrime and antidrug activities the PHA plans to undertake, including the costs of such activities
 - State whether the relevant activities are new or currently ongoing activities
 - For currently ongoing activities, state how the activities are currently funded
 - For new and ongoing activities, state how the PHA intends to maintain such activities, if applicable
 - If applicable, please provide a copy of the police service agreement the PHA intends to fund as an activity by way of this waiver request, demonstrating how the agreement is above baseline;
- Optional Attachments:* The PHA may also wish to include supporting narrative or agreements from one or more of the following:
 - Resident Advisory Boards or PHA security personnel;
 - local Community Policing Organizations; OR
 - local officials (e.g., business council executives, or city council executives).

PLEASE NOTE, the anticrime and antidrug activities described by the PHA **must** be Operating Fund eligible activities, for example, costs for security guard salaries or ongoing security services. A waiver request is not necessary for activities which are Capital Fund eligible, for example, installation of lighting, fencing, or cameras or training of in-house security staff. For example, installation of security cameras is Capital Fund eligible, while ongoing maintenance and monitoring of the cameras are Operating Fund eligible expenses. A waiver request to install security cameras would be denied because the PHA does not need to transfer Capital Funds to BLI 1406 Operations in order to do so, while HUD would consider a waiver request to pay the salary of security staff to monitor the installed cameras.

HUD will notify the PHA of HUD's decision in writing within 14 days of the submission date of the request. If approved, the PHA must ensure that such use of funds is included in its approved CFP 5-Year Action Plan before the PHA proceeds with placing Capital Funds onto BLI 1406 Operations.

Resident Consultation: The PHA is required to hold a public hearing, consult with the resident advisory board (RAB), and submit any comments received from these hearings and the consultations.

- There must be a 45-day notification given prior to the hearing.
- The Capital Fund Submission must be made available to residents and the RAB prior to the hearing.

PHA Plan Submission. In order to comply with the requirements of 24 CFR 903.7(g), PHAs are required to include a statement of capital improvements needed in the PHA Annual Plan. In the past, a PHA satisfied this requirement by including copies of its CFP Annual Statement/Performance and Evaluation Report (HUD 50075.1) and the CFP 5 Year- Action Plan (HUD 50075.2) forms with the Annual PHA Plan. Now that the Capital Fund submission is decoupled from the PHA Plan, PHAs are still required to incorporate some information on the capital improvement needs in the Annual PHA Plan. To satisfy that requirement, HUD is requiring the PHA to reference its latest HUD approved CFP 5 Year Action Plan covering the current Fiscal Year in its PHA Plan, prior to submission of the PHA Annual Plan. PHAs can reference the form by including the following language in Section 8.0 of the PHA Plan Template: "See HUD Form 50075.2 approved by HUD on XX/XX/XXXX."

During the PHA Plan review, HUD field office staff will not be required to review the previously approved CFP 5-Year Action Plan. HUD will consider the requirement to include a statement of capital improvements needed as satisfied by the reference to the previously approved CFP 5-Year Action Plan. For the purpose of the annual hearing, PHAs should provide a copy of the form that they reference in the Annual Plan.

Environmental Review. In accordance with the changes in process announced in [Notice 2016-22](#), all activities at project site(s) assisted or to be assisted by HUD must receive environmental clearance before the PHA takes any choice-limiting actions or obligates any funds. HUD has made a programmatic determination under Part 50 that the operating activities listed in Appendix A of Notice 2016-22 are not subject to further environmental review; for any other activities, PHAs must request and receive clearance from either a Responsible Entity or HUD.

HUD Field Offices are not required to withhold approval of CFP 5-Year Action Plans or place manual holds on CFP grants in LOCCS, pending receipt of environmental clearance documentation. However, HUD Field Offices may elect to do so as part of enhanced monitoring.

Even though Field Offices are permitted to approve CFP 5-Year Action Plans without confirming environmental clearance, the Work Activity Description in a PHA's CFP 5-Year Action Plan must provide sufficient specificity to facilitate effective HUD Field Office review

of the plan and subsequent environmental review monitoring. Specificity is required so that Field Office staff can determine the level of environmental review required for a given work activity. PHAs are encouraged to enter information in the Description field on the scope of the activity (e.g., number of units impacted). For example, for a work activity covering roof replacement, a sufficient description may read: “Installing new 20-year roof, as well as gutters and soffits, at low-rise building containing 5 Public Housing units.” A work description simply stating “Roof” would be insufficient because it does not indicate whether the activity will cover full-scale replacement of the roof or simply patching portions of the roof, a distinction with implications for the level of environmental review required.

Obligation End Date (OED) Extensions. The 1937 Act and the regulation permit the Secretary or Deputy Secretary (now delegated to the Assistant Secretary) to grant time extensions of the obligation deadline but only in very limited circumstances. The reasons for granting time extensions stated in Section 9(j)(2)(A) of the 1937 Act are the following:

1. litigation;
2. obtaining approvals of the Federal, State, or local government;
3. compliance with environmental assessment or abatement requirements;
4. relocating residents;
5. an event beyond the control of the public housing agency (PHA); and
6. Any other reason established by the Secretary in a notice in the Federal Register. In a notice published January 19, 2017 at 82 Federal Register 6615, and revised through PIH Notice 2019-23 published on September 5, 2019, the Department of Housing and Urban Development (Department) indicated that it will extend the obligation end date for Capital Funds used in a RAD conversion for up to thirty-six months from the previous obligation end date.

In addition, the Secretary may extend the time period under Section 9(j)(2)(C) of the 1937 Act for an additional period not to exceed 12 months, based on the following:

1. The size of the PHA;
2. The complexity of the capital program of the PHA;
3. Any limitations on the ability of the PHA to obligate amounts allocated for the agency from the Capital Fund in a timely manner as a result of State or local law;
or
4. Such other factors as the Secretary determine to be relevant.

All requests for extensions of the OED must be submitted to HQ prior to the current OED and must indicate the criteria from Section 9(j)(2)(A) or Section 9(j)(2)(C) of the 1937 Act it meets to justify the extension. HUD has no ability to grant extensions of OED deadlines after the deadline and does not have the ability to extend the expenditure end date (EED) unless the grant was approved for an OED extension prior to the original OED. EEDs are always two years after the OED. The EED for grants with extended OEDs will be two years after the new OED. Submissions must be sent to, the Director of the Office of Capital Improvements. A copy of the extension request should be sent to PIH_OCI@hud.gov and the subject line should read as follows: Request for the Extension of the Obligation End Date for (PHA code), for Capital Fund grant (Grant #)

Please note that if a PHA reaches its OED prior to receiving the approval letter for an OED extension request, then the request will still be processed as long as it was received by HUD prior to the current OED.

Additional Information. If you have any questions or you need additional information, please contact the Field Office staff in your jurisdiction. For assistance from PIH Headquarters, Office of Capital Improvements, you may email your questions to PIHOCI@HUD.gov.