



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

SPECIAL ATTENTION OF:

Public Housing Directors
Public Housing Agencies
HUD Field Offices

NOTICE PIH-2016-13

Issued: September 20, 2016

Expired: Remains Effective Until
Replaced or Rescinded

Cross References:

24 CFR 905
24 CFR 970
24 CFR 990
2 CFR 200
HUD Notice 2012-48
PIH Notice 2011-07
ACC 13(A) and (B)
MF ACC 11

Subject: Guidance on Property and Casualty Insurance Issues.

1. **PURPOSE.** This notice provides guidance regarding procedures to be followed in the event of a casualty, as well as use restrictions, reporting requirements on insurance proceeds, and eligible uses related to casualties for Operating or Capital Funds. In addition, the notice modifies existing guidance related to the eligibility of units that have been subject to a casualty for continued Operating Funds.

2. **BACKGROUND.** This Notice synthesizes requirements from multiple sources. Specific citations to controlling authorities are provided below as background.
 - **24 CFR Part 965, Subpart B – Required Insurance Coverage**
Implements policies concerning insurance coverage for PHAs including qualified PHA-owned insurance entity and lead-based paint liability insurance coverage.
 - **Consolidated Annual Contributions Contract (ACC) (form HUD 53012A (7/95))**
 - **Section 13(A):** Requires PHAs to procure adequate insurance [listed in Part B, Attachment VII of the ACC—form HUD 53012 B (7/95)]. Outside of reasonable deductibles, PHAs should have adequate insurance to cover the cost to rebuild or replace damaged or destroyed units.

- **Section 13(B)**: Requires PHAs to promptly restore, reconstruct and/or repair any damaged or destroyed property of a project, except with written approval of HUD to the contrary.
- **Parts A and B of the ACC can be found on HUDCLIPs at the below URLs:**
- <http://portal.hud.gov/hudportal/documents/huddoc?id=anncontributionspta.pdf>
- <http://portal.hud.gov/hudportal/documents/huddoc?id=anncontributionsptb.pdf>
- **2 CFR Part 200** – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Award apply to both HUD and PHAs. HUD has incorporated Part 200 into its Capital Fund regulations at 24 CFR 905.308(a) by conforming regulations and is in the process of incorporating Part 200 into HUD’s notices, forms, guidebooks and handbooks. General Insurance requirements under Property Standard and Cost Principles (2 CFR 200.310 and 200.447) apply to PHAs (as non-Federal entities) operating public housing grant programs. However, there are additional insurance requirements governed by statute (see discussion at 24 CFR 965.205(b)) and specified in HUD’s ACC, which continue to apply.
- **Mixed Finance Amendment to the ACC, Section 11:** Section 11 of the Mixed Finance Amendment to the ACC modifies Section 13(B) of the ACC in its entirety for the Mixed Finance Project to which the ACC Amendment applies. **24 CFR 990.145(b)(2):** Provides that PHAs may receive Operating Funds for units that are vacant due to a federally declared, state declared, or other declared disaster. Reporting and other requirements related to this status can be found in Notice PIH 2011-7.
- **24 CFR 990.145(b)(3):** Provides that PHAs may receive Operating Funds for damaged units that remain vacant due to delays in settling insurance claims. This Notice revises and replaces language pertaining to the funding of units vacant due to casualties in Notice PIH 2011-7.
- **24 CFR 905.200** stipulates that Emergency Work as defined in 24 CFR 905.108 and as described in 24 CFR 905.200(b) (18) is an eligible use of Capital Funds. Unlike normal Capital Fund activities, Emergency Work is not required to be included in a CFP 5-Year Action Plan for it to be an eligible Capital Fund activity. Management Improvements are not eligible as Emergency Work, and therefore must be covered by an approved CFP 5-Year Action Plan before the PHA may carry them out.
- **24 CFR 905.204 and Notice PIH 2012-48:** These authorities enumerate requirements and provide guidance to PHAs on how to apply for Capital Fund Emergency and Natural Disaster Grants. The Notice further specifies that Capital Fund Emergency and Natural Disaster Grants may not be used for costs related to Presidentially declared natural disasters. PHAs suffering from damage due to Presidentially declared disasters are advised to contact the Federal Emergency Management Agency (FEMA) directly for guidance regarding the application process for its Public Assistance program.

For the purposes of this Notice, a casualty is an event that results in the damage or destruction of public housing (as defined in section 3(b) (1) of the United States Housing Act of 1937 (42 USC 1437a (b) (1) (the 1937 Act). According to 24 CFR 905.204(b), an emergency is an unforeseen or unpreventable event or occurrence that poses an immediate threat to the health and safety of the public housing residents and, emergency work must be completed within one year of funding. A disaster is an extraordinary event, such as an earthquake, flood, windstorm or hurricane.

3. ELIGIBLE USES OF CAPITAL FUNDS IN THE EVENT OF A CASUALTY.

The costs of repairing or rebuilding public housing projects due to damage or destruction caused by casualties, emergencies or natural disasters are eligible Capital Fund expenses. Capital Funds may also be used for relocation costs incurred as the result of casualties, emergencies, or natural disasters. Costs related to casualties, emergencies or natural disasters may eventually be covered with insurance proceeds, or, if approved by HUD, in a separate grant from the annual appropriations set-aside funds for emergency and natural disasters. PHAs are not required to use amounts from insurance proceeds or emergency and disaster funds to repay the Capital Fund for eligible Capital Fund expenditures related to casualties, emergencies or natural disasters. However, if the PHA receives insurance or disaster proceeds, the PHA must return Capital Fund Emergency and Natural Disaster Grants to the extent that the proceeds cover the same work funded by an Emergency or Disaster grant.

Emergency and natural disaster grants can only be used to pay costs associated with Emergency Work or the repair or replacement of a public housing project damaged as a result of a non-Presidentially declared natural disaster or emergencies; are not available for non-routine maintenance or improvements beyond the PHA's pre-disaster state. For non-presidentially declared natural disaster or emergencies, as further specified in Notice PIH 2012-48, PHAs may submit preliminary applications if there are immediate repairs that need to be made to preserve the public housing project or safety of public housing residents, and then submit a final application with a greater level of specificity or documentation if further funds are needed. As part of the process related to Capital Fund Emergency and Natural Disaster Grants, the Department undertakes a reconciliation to ensure that the PHA does not receive duplicate funding and, in appropriate circumstances, would recapture the funds or would mandate that the PHAs return Capital Fund Emergency and Natural Disaster Grant amounts where the total funding a PHA receives exceeds costs. Any Operating Funds used for emergencies must be repaid before recapturing Capital Fund Emergency and Natural Disaster Grants. PHAs should read Notice PIH 2012-48 for further requirements and guidance related to the use of Capital Fund Emergency and Natural Disaster Grants for non-presidentially declared natural disasters.

4. ELIGIBLE USES OF OPERATING FUNDS IN THE EVENT OF A CASUALTY.

PHAs may use Operating Funds for Emergency Work due to unforeseeable and unpreventable emergencies that include damage to the physical structure of the PHA's housing stock, for example, damage as a result of a natural occurrence such as a windstorm or flood. Although damages caused by unforeseen emergencies may eventually be covered with insurance proceeds, or through disaster funds, PHAs may use Operating Funds to cover the expenses incurred prior to receipt of insurance or disaster proceeds. PHAs must reimburse their operating account for any expenses that were initially covered with Operating Funds. PHAs must use insurance or disaster proceeds to reimburse their operating account up to the amount received.

5. INSURANCE PROCEEDS ARE NOT CONSIDERED PROGRAM INCOME.

Insurance proceeds are not considered program income (see 2 CFR 200.80); however, insurance proceeds are counted toward Total Development Cost limits (see 24 CFR 905.314). For conventional public housing projects, after repairing or reconstructing the Public Housing project, if the PHA has unspent insurance proceeds, or if the PHA receives approval from HUD not to repair or rebuild, after reimbursing their Operating Fund account and/or repaying the Capital Fund Emergency or Natural Disaster Grant as needed and making any legally permissible payments required by debt instruments (e.g., the Capital Fund Financing Program (CFFP) or Energy Performance Contracting (EPC)), any remaining insurance proceeds must be used to modernize or develop public housing, unless otherwise approved by HUD in writing.

Insurance proceeds may also be realized from damage to or loss of public housing units that have been developed in accordance with public housing mixed-finance public housing rules. The use of all insurance proceeds realized from mixed-finance public housing units is governed by Section 11 of the Mixed-Finance Amendment to the ACC.

6. CASUALTY REPORTING REQUIREMENTS.

The ACC requires PHAs to repair or rebuild damaged units promptly, unless they receive written approval from HUD to the contrary. Thus, when a project has been damaged by casualty, emergency or disaster, the PHA should immediately proceed to develop a plan for the damaged project. In developing a plan, the PHA should consider:

- the extent of damage (complete or partial loss) to the units;
- the funding available for repair or replacement (including insurance proceeds), considering the realities of the local construction market;
- whether the damaged unit was a UFAS Accessible Unit or otherwise contained accessible features, contained modifications under a reasonable accommodation, the loss of which would affect the PHA's compliance with a remedial agreement or order, or the loss of which would affect the PHA's compliance with physical accessibility requirements under 24 CFR Part 8, Subpart C; and

- the PHA's future plans for the project (e.g., if the PHA is planning on demolishing, disposing, or converting the project in the future).

HUD suggests that PHAs reach out to their appropriate HUD Field Office as soon as possible after the damage with a plan for repairing, rebuilding, demolishing, disposing, converting, or replacing the damaged public housing property. The HUD Field Office will then assist the PHA in determining what other HUD approvals, if any, are necessary to achieve that plan (e.g. demolition/disposition under 24 CFR part 970; public housing development approval under 24 CFR part 905). If they plan not to repair or rebuild, PHA's must submit a written request for approval from the appropriate HUD Field Office not to repair or rebuild units. The request should identify the estimated cost to repair or rebuild, as well as the estimated amount of insurance proceeds, and the reason the PHA is requesting approval not to repair or rebuild, the future plans for the damaged unit/underlying property (e.g., demolition and green-space, disposition with replacement, disposition without replacement, and conversion), and the projected timeframe for submitting a demolition and/or disposition application to HUD (Special Applications Center), if applicable.

Because unspent insurance proceeds are generally restricted to the modernization or development of public housing, unspent insurance proceeds are reported in Financial Data Schedule (FDS) Line Item 112 – Cash – Restricted – Modernization and Development, **or** FDS Line Item 132 – Investments - Restricted.

In the event of a casualty, PHAs should report in the FDS an equal number of months in Unit Months Leased as they report revenue. Doing otherwise would distort their Formula Income, inappropriately reducing Operating Fund eligibility.

The Financial Data Schedule (FDS) Line Definition Guide at the link below provides assistance in financial reporting and the preparation of the FDS. The Guide also provides examples and explanations for specific FDS line definitions.

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/products/prodpha

7. VACANCY PAYMENTS.

Per 24 CFR 990.145(a), PHAs may receive Operating Funds for vacant units that have suffered a casualty loss where the damaged units remain vacant due to delays in settling insurance claims. A PHA may only continue to receive Operating Funds for vacancies due to casualty losses up until the point in time at which the claim is settled. Provided the PHA timely submitted insurance documentation, and the insurance company did not settle the claim in a timely manner, the *Casualty Loss* Sub-Category covers the period between the date a unit becomes uninhabitable due to the casualty (such as a fire or water pipe break or other type of accidental damage covered under a property insurance policy) until the date the claim is settled.

