

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

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Notice PIH 2003-10 (HA)

**Special Attention of:**

All Public Housing Directors;  
Public Housing Agencies;  
HUD Field Offices;

**Issued: April 4, 2003  
Expired: April 30, 2004**

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**SUBJECT: Capital Fund - Replacement Housing Factor Funding-Instructions**

**A. General.** The Capital Fund Formula Rule at 24 CFR 905.10(i) provides that a public housing agency (PHA) may receive Replacement Housing Factor (RHF) funding for a period of up to 5 years. A PHA may be given RHF funding only if the PHA did not receive funding for public housing units under public housing development, Major Reconstruction of Obsolete Public Housing, HOPE VI or other programs that would otherwise provide replacement housing. Beginning with funding provided in Fiscal Year (FY) 2000, RHF funding can only be used for replacement public housing.

A PHA may receive funding for an additional 5 years if it will be leveraging substantial additional funding from sources other than public housing funds. The PHA seeking the additional funding must have all required PHA Plans approved and be in compliance with statutory obligation and expenditure deadlines. Section 905.10(i)(7) provides that RHF funds must be obligated within:

1. 24 months from the date that the funds become available, or
2. with specific HUD approval, 24 months from the date the PHA accumulates adequate funds to undertake replacement housing.

All replacement housing must be undertaken in accordance with the public housing development regulations at 24 CFR 941. All PHAs, including Moving-To-Work (MTW) PHAs, must (a) submit an RHF Plan, (b) submit a development proposal as described below and (c) proceed in accordance with their plan upon receiving the 5th year of funding. If the PHA requests an additional 5 years of funding, it must proceed with the development of the first 5-year increment and submit a plan for a second, discrete, development based on the second increment of funding provided in years 6 through 10. If the PHA fails to meet the 2-year obligation deadline for the development funded from the first 5-year increment, the PHA will receive no further RHF funding for the second increment, and any grants provided for the second increment will be recaptured.

In submitting its development proposal pursuant to 24 CFR 941, PHAs must comply with Section 9(g)(3) of the U.S. Housing Act of 1937. Section 9 provides that a PHA may not

construct any new units if the construction would result in a net increase from the number of public housing units owned, assisted or operated by the PHA on October 1, 1999, including any public housing units demolished as a part of any revitalization effort. This provision does not apply to the development of additional public housing through the acquisition (with or without rehabilitation) of units from the open market.

The PHA may construct new units in excess of the number of units in its inventory on October 1, 1999, but will not be eligible for additional funding under the Capital or Operating Fund formulas. The PHA may also construct new units in excess of the number of units in its inventory on October 1, 1999, if the units are part of a mixed-finance project or otherwise leverage significant additional private or public investments and the estimated cost of the useful life of the project is less than the estimated cost of providing tenant-based assistance under Section 8(o) of the U.S. Housing Act of 1937 for the same period.

Field Offices will be responsible for reviewing each development proposal, in accordance with Section 9(g)(3). The Public Housing Information Center (PIC) is being modified to provide data elements to reflect these requirements. Field Offices will be responsible for ensuring that PIC contains the appropriate data for each development proposal approved, that is to be excluded from the Capital or Operating Fund formula.

**B. RHF Plans.** An RHF Plan is a description of the steps that a PHA will carry out to provide replacement housing. A PHA must submit an RHF Plan for each 5-year increment of funding. RHF Plans must contain the following:

1. A Brief Description.
  - a. The total units to be developed,
  - b. The development method (e.g., new construction, acquisition with or without rehabilitation), and
  - c. Structure type (single family, row, walk-up, etc.).
2. Schedule. A schedule of major development milestones (e.g., hire the architect, prepare plans and specifications, etc.), through and including the date the PHA plans to submit its development proposal to the HUD Field Office, and the Date of Fund Availability (DOFA). The latest date that a PHA can submit a development proposal, for a PHA's first 5 years of RHF funding, is 90 days after execution of the Annual Contributions Contract (ACC) by the HUD Field Office, or the due date of the PHA's Annual Plan for that year (the 5<sup>th</sup> year), whichever is later. The latest date that a PHA can submit a development proposal, for the second 5-year increment of RHF funding, is 90 days after execution of the ACC by the HUD Field Office, or the due date of the PHA's Annual Plan for the 7<sup>th</sup> year, whichever is later. A development plan may be submitted earlier.
3. Amount and Sources of Funding. The RHF Plan must include information describing the amount and sources of funding for the replacement housing for both the first and second 5-year increments of 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 firm commitment of substantial additional funds, other than public housing funds, for replacement housing, as determined by HUD. A PHA should document the resources it proposes to use as leverage, including the name of the organization providing the resource, the dollar value of the proposed resource, and the proposed use. PHAs may use any funds other than public housing funds for leveraging. Examples include: 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 that are to be repaid with RHF funds. When borrowing funds, PHAs 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.) Any pledge of RHF funds or other Capital Funds by a PHA must be approved by Headquarters.

As stated above, a PHA's RHF Plan must demonstrate "substantial leveraging". In general, this standard is met where a PHA leverages an amount of non-public housing funds at least equal to one-third of the total RHF funds in the first 5-year increment. For example, a PHA receiving \$105,000 in RHF funding in each of the first 5 years, would have received a total of \$525,000 in RHF funds. One-third of \$525,000 is \$175,000. Therefore, the PHA must leverage funding from non-public housing sources totaling at least \$175,000 to qualify for a second 5-year increment of RHF funds.

4. Plan and Obligation/Expenditure Status. A statement addressing (1) the approval status of the 5-year PHA Plan and all annual plans, and (2) compliance with obligation and expenditure deadlines in FY's 1998-2000.

**C. Obligation and Expenditure Commencement Dates.** If no RHF Plan is received as required in paragraph D below, the commencement date will automatically be 24 months from the date that funds become available for each year of RHF funding. If the RHF Plan is submitted as required, the obligation and expenditure commencement dates will be established 30 days from the date the PHA proposes to submit its development proposal to the local HUD Field Office. The commencement date will be the basis for establishing the statutory obligation and expenditure deadlines. For PHAs only developing the first 5-year increment, all funds must be obligated within 2 years and expended within 4 years from the start date established in their HUD Field Office approved Plan. For PHAs requesting a second increment of RHF funding, HUD will require, as a condition for receiving additional grants in years 6 through 10, notwithstanding any other requirement of this Notice, that all funding (increments one and two) be fully expended by the end of the 10<sup>th</sup> year of funding.

**D. Timing of RHF Plan Submission.**

1. RHF Funding Received Prior to FY 2003-First Increment. All PHAs, regardless of their intent to request a second increment, must submit an RHF Plan for the use of the first increment of RHF funding to the local HUD Field Office for approval by **May 30, 2003**,

or the due date of the PHA's Annual Plan for that year, whichever is later. No RHF Plan is required if the HUD Field Office has already approved a development proposal for the entire first increment. If a development proposal has been approved for less than the entire first increment, an RHF Plan for the remaining funding is required. PHAs that do not submit an RHF Plan will have an obligation/expenditure commencement date based on the date when the funds were originally made available for each grant. As a result, some PHAs and RHF grants will be subject to penalties required by law (e.g., recapture). HUD Field Offices that approve the RHF Plan for the first increment are to enter the obligation deadline in the Line Of Credit Control System (LOCCS).

2. FY 2003 Capital Fund Formula Amount-Requesting Second Increment. In order to request funding for an additional, second 5-year increment beginning with the FY 2003 Capital Fund grant (relevant to PHAs that first received RHF funds for FY 1998) and to have an obligation deadline beyond 24 months from the date funds became available for each grant received in prior years, a PHA must submit an RHF Plan to HUD Headquarters for the second increment in years 6 and beyond, **no later than May 30, 2003**. A copy of the RHF Plan must be submitted to the local HUD Field Office at the same time for approval. If funding is provided, HUD Field Offices will establish obligation and expenditure deadlines in accordance with paragraph C above. The RHF Plan must be submitted to William C. Thorson, Director, Office of Capital Improvements. Submission by fax is acceptable. Mr. Thorson's fax number is (202) 401-3997. PHAs that do not submit an RHF Plan will not receive a second increment of funding. PHAs that have received an initial 5 years of RHF funding, and do not want a second increment of funding, should proceed in accordance with paragraph D.1. above.
3. First RHF Funding Received in FY 2003. PHAs receiving RHF funding for the first time beginning in FY 2003 must submit an RHF Plan for the use of RHF funding no later than 90 days after funds become available, or the due date for the receipt of its Annual Plan for that year, whichever is later. If no RHF Plan is received, the obligation and expenditure deadlines will automatically be established based on 24 months from the date funds become available. If the development proposal is not received and funds are not obligated by the deadline, a PHA will be subject to the penalties required by law (e.g., recapture).

**E. Paperwork Reduction.** The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2577-0226 and 2577-0033. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

/s/

Michael Liu, Assistant Secretary  
for Public and Indian Housing