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U.S. Department of Housing & Urban Development
451 Seventh Street SW. Room 10276
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**RE: Comments on Proposed HUD Rule on the Public Housing Capital Fund Program;
24 CFR Parts 903, 905, 941, 968 and 969**
Docket No. FR-5236-P-01; RIN 2577-AC50
Published 2/7/2011; 76 Fed. Reg. 6654

The Saint Paul Public Housing Agency (PHA) submits the following comments regarding the Department's Proposed Rule on the Public Housing Capital Fund Program. We also join in the comments from the Public Housing Authorities Directors Association (PHADA).

The Saint Paul Public Housing Agency is an independent governmental agency that owns and manages over 4,200 public housing dwelling units and administers over 4000 Section 8 Housing Choice Vouchers in the City of Saint Paul, Minnesota. The PHA has been rated a "High Performer" agency every year under PHAS and PHMAP.

We offer the following specific comments, all of which support local flexibility for housing agencies (HAs):

1. Energy Conservation; energy audits; cost effectiveness. We support the implementation of cost-effective energy conservation measures in principle but we do not believe there should be any requirement to implement energy conservation measures identified by an energy audit.
2. The percentage of capital funds allowed for management improvements should not be reduced from 20 percent to 10 percent. HAs that need these funds should continue to have this flexibility.
3. The CFP 5-Year Action Plan should not require HUD approval; inclusion in the 5-Year Action Plan should not be an absolute requirement for spending CFP funds; and the 5-Year Action Plan should not be strictly bound by the Physical Needs Assessment.
4. The Replacement Housing Factor (RHF) should not be reduced from 10 years to 5 years. RHF is one of the few tools available to develop new public housing units.



These comments are explained further below, along with our recommendations on several other issues.

1. Energy Conservation; energy audits; cost effectiveness. We recommend that local housing agencies (HAs) be allowed discretion to determine which energy- and water-conserving measures they will undertake, and when, based on local considerations.
 - a. HAs must decide on the priorities for using their operating and capital funds in consultation with the residents. There may be higher priority uses than energy conservation measures, such as conditions that affect the safety and habitability of the properties.
 - b. Energy audits are neither always reliable nor of the same quality. Predicted savings will not necessarily be achieved.
 - c. Cost-effectiveness is a complex concept as neither HUD nor a housing authority receives all the benefits of the energy savings.
 - d. If HAs and HUD are to further the Administration's goals of reducing reliance on petroleum-based energy sources, cost effectiveness should not be the only factor considered. For example, the payback may be relatively long for the solar-assisted domestic hot water system we installed in a St. Paul PHA hi-rise with ARRA funding. However, the system will reduce consumption of natural gas and fuel oil in the main boilers, by using a renewable energy source.
 - e. Housing agencies that have been able to maintain their properties in good condition and implement energy- and water-saving measures should not be prohibited (nor discouraged) from investing CFP funds to accomplish additional energy and water conservation improvements that will realize smaller savings and longer payback periods. HAs should have the ability to fund energy and water conservation measures that may have long paybacks but make sense for other reasons. For instance; replacing windows with new energy saving units because the windows are in poor shape, cause drafts, and require lots of maintenance despite the fact they have a long payback, or replacing a roof and installing additional insulation because the roof is in poor condition despite the fact that the incremental improvement in R value has a long payback.
 - f. If HUD places a high priority on accomplishing energy and water conservation at HAs they should take steps to give HAs incentives for reducing energy and water consumption. Incentives might include allowing HAs to freeze their rolling base and retain the cost savings that result from implementing energy and water conservation measures for 20 years in a manner similar to methods allowed by the Energy Performance Contracting program. HAs should be rewarded for using CFP and Operating funds to accomplish energy and water conservation measures by being allowed to benefit from the energy and water conservation cost savings. A PHA's professional Energy Audits are a good resource for identifying and

prioritizing energy and water conservation opportunities; although, as stated above, predicted savings will not necessarily be achieved.

- g. There should be no limitation on the use of CFP funds to conduct energy audits. HUD requires HAs to conduct new energy audits every 5 years. HAs should have the flexibility to use Operating Fund or CFP to pay for audits at their discretion.
2. Replacement Housing Factor (RHF). We support keeping the RHF funding at 10 years rather than reducing it to 5 years.
 - a. The proposed rule apparently allows the HA to accumulate RHF funding for more than five years. We support that, since our RHF grants accumulate slowly and we need to pool them to accumulate enough funds to acquire even a single unit.
 - b. The proposed rule eliminates the matching requirement now required for the second 5-year increment of RHF funding. We support eliminating the match requirement.
 3. Management Improvements. Local agencies should be allowed to keep the flexibility embodied in the current 20 percent limit on using CFP for management improvements.
 4. CFP 5-Year Action Plans. The proposed rule states that “Except in the case of emergency work, the PHA shall not spend Capital Funds on any work that is not included in an approved CFP 5 – Year Action Plan and its amendments”. (Proposed Sec. 905.300 (b)(7)(i), p. 6666 of 2/7/2011 Federal Register). The proposed rule also states that “HUD will review CFP submission requirements [sic] to determine whether ...
 - a. Inclusion in the 5-Year Action Plan should not be an absolute requirement for spending CFP funds. Local HAs need to establish and modify their CFP work based on a variety of local needs and conditions that can change unpredictably. HAs need flexibility to meet the needs of their residents and their communities.
 - b. It is appropriate for HUD to require HA’s to complete and periodically update Physical Needs Assessments (PNAs). We are still waiting for HUD direction on completing a new PNA as promised by PIH 2010-46 (November 10, 2010). Five-Year Action Plans for CFP are also an appropriate planning and budgeting tool. However, a HA requires more flexibility than the proposed rule would allow.
 - c. The adoption of language that makes activities that are not included in a PHA’s CFP 5 – Year Action Plan ineligible for CFP funding is not necessary and will create problems for HAs. Our CFP 5 – Year Action Plan is updated each year and has a new fifth year added while the previous 5 Year Action Plan’s first year is dropped off. For instance our FFY2011 CFP 5 –Year Action Plan includes an Annual Statement / Performance and Evaluation Report (HUD form 50075.1) application for FFY2011 CFP funding and our Capital Fund Program 5-Year Action Plan (HUD form 50075.2) for planned work in FFY2012, FFY2013, FFY2013 and FFY2014. We typically are working on obligating and expending CFP funds for three grants prior to the beginning of our 5 – Year Action Plan.

For instance our current active grants are for FFY2008, FFY2009 and FFY2010. Work that was in our FFY2008 5 – Year Action Plan included the work items for our FFY2008 grant but our new 5 – Year Action Plan does not include FFY2008. We would have to expand to an 8 – Year Action Plan if we were to cover our three open grants plus covering the future 5 years.

- d. We think it would make more sense for the new regulations to say that eligible CFP activities must be included in an approved CFP Annual Statement/ Performance and Evaluation Report (HUD form 50075.1). This would mesh with our procedures; that are as follows; we will receive HUD notification of our FFY2011 final funding amount (which will be different from the amount we submitted with our Agency Plan) and a new ACC amendment, we will then execute and return our ACC amendment to HUD, then we will revise our FFY2011 Annual Statement / Performance and Evaluation Report to match our actual funding amount and get our Board of Commissioners Approval of the revised Annual Statement and will submit it to HUD. We do not typically update the balance of the 5 – Year Action Plan (HUD form 50075.2) when we submit our updated Annual Statement / Performance and Evaluation Report (budget for FFY2011) and we think it is an unnecessary step when we request access to our new CFP funds.
- e. We make changes to our open CFP grants due to differences between our original estimates and actual bids, unanticipated work that develops, and we use fungibility to move work items from one open grant to another open grant. Requiring us to go to an 8 – Year Action Plan and update it for every change that happens is unnecessary and would be burdensome. We report on our CFP activities and status on our open grants to our residents, Resident Advisory Board, and Board of Commissioners on a regular basis so updating a 5 – Year Action Plan is unnecessary.
- f. HUD should not tie approved CFP activities to PNA's and 5-Year Action Plans too strongly. We should not have to revise our 5-Year Action Plan and PNA every time an urgent need appears. For example, our Maintenance Department staff may discover a boiler problem or a leaking roof that needs to be taken care of right away. We try to keep our PNA up to date but HUD needs to trust our decisions about what needs to be done and what the priorities are.
- g. The requirement that HAs adhere strictly to their PNA and CFP 5 – Year Action Plan (which is simply a long range improvement planning tool) takes away our ability to respond to unpredictable maintenance/modernization needs that arise.

For instance, in St. Paul a windstorm caused a 9 foot by 12 foot section of stucco fall off the 10th floor of one of our hi-rises in 2007, despite no prior indications of problems with the stucco. When it happened we promptly revised our CFP budget to hire an engineering firm to evaluate the problem and recommend corrective action. Once that work was completed we had the consultants develop bid documents and we solicited bids. We then proceeded with the repairs. We

had to revise all of our open CFP grants to make the funding for this repair available. Those open grants were not part of our 5 – Year Action Plan. The need to respond to this type of situation probably does not meet the test of “immediate threat to life and safety” to be deemed an “emergency”.

- h. We are also concerned about requiring that our 5 – Year Action Plan be “approved”. The process of gaining HUD approval of every item contained in our 5 –Year Action Plan and having HUD micromanage the relationship of our 5 – Year Action Plan to our PNA will be burdensome and unnecessary. Gaining HUD approval of one year of planned CFP activity through review and approval of our Annual Statement / Performance and Evaluation Report is adequate.
 - i. The process of expanding our 5 – Year Action Plan to cover our three open grants plus the years in our 5 – Year Action Plan and updating it with every change that occurs would be difficult. The proposed regulations are also vague about the meaning of “approved”. If “approved” means submitting and getting approval from our local HUD office it will create additional paperwork and delays in executing our planned work. As a “PHAS High Performer” agency we have not been required to seek local HUD office approval on most minor revisions. The CFP 5 – Year Action Plan should be a long-range planning tool only.
 - j. We are willing to develop and submit a 5 Year Action Plan on an annual basis with our CFP application and we concur that HUD should review and approve our planned Annual Statement/Performance and Evaluation report prior to releasing our CFP funds. We are worried however, that differences of opinion about what needs to be done 4 years in the future may delay our access to our CFP funds and unnecessarily delay our progress on completing important CFP work.
5. “Decoupling” CFP and Annual Plan Requirements (24 CFR Part 903, Subpart B – PHA Plans). While we support simplifying the requirements for both the Annual Plan and the Capital Fund Program, we do not see a need to “decouple” or separate the CFP from the Annual Plan. Integrating the CFP annual application and the Agency Plan update allows us to consolidate meetings with our Resident Advisory Board and our Public Hearing. Separating the CFP annual application development and submittal process would put additional demands on our residents and Resident Advisory Board to attend more meetings and donate more of their valuable time.

The proposed change may lead to HUD publishing new reporting forms including the Annual Statement/Performance and Evaluation Report (form HUD-50075.1), CFP 5-Year Action Plan (form HUD-50075.2) and the CFP Annual Contributions Contract (ACC) Amendment, as well as a new guidebook. We hope that HUD will clarify that facsimiles of the revised HUD forms 50075.1 and 50075.2 will be accepted from HAs. We have developed Excel-based facsimiles of these forms that we have used for years to develop applications, track obligations and expenditures, make budget revisions and report to HUD, our Board and residents.

We look forward to receiving the new Guidebook. A new Capital Fund Program handbook has been promised for years but the only guidebook we have is the old Comprehensive Grant Program Handbook 7485.3.

6. Cost limitations for modernization of public housing. We do not support the limit of 90% of the Total Development Cost (TDC). Our experience is that the TDC limits are low and don't accurately reflect a PHA's true costs to construct units that comply with prevailing wage and other contract requirements that are unique to HAs.

The determination as to whether a public housing development should be modernized or not is a complex issue and should not be held to an absolute requirement that the cost of the modernization can't exceed 90% of TDC.

This limitation implies that any development that can't be modernized for less than 90% of TDC should be vacated and demolished via submittal of and approval of a demolition application. The criteria for making a decision about whether to modernize or not should be whether the existing housing can be demolished, the residents relocated and temporarily housed, comparable public housing constructed, and the original residents moved back for a cost that is less than the planned cost to modernize the original units.

The decision to modernize should also include an analysis of the future viability of the modernized development, the design quality of the modernized housing, its relation to the surrounding community and its impact on racial and income concentration issues.

7. Capital funds allowed for management improvements should not be capped at 10 percent, down from the current 20 percent. HAs that need these funds should continue to have this flexibility based on local needs and conditions.
8. Replacement Housing Factor (RHF) funding should not be reduced from ten years to five years. RHF is one of the few tools available to develop new public housing units. The current Replacement Housing Fund program annual funding is equivalent to what the PHA would have gotten in its CFP annual allocation had the removed unit still been in inventory. For our PHA that amount is approximately \$2200/unit per year. Five years of funding at this \$2200/year level equals \$11,000. Even ten years of RHF funding at \$2200/unit/year or \$22,000 is not sufficient to allow the acquisition of a replacement unit, and reducing RHF funding to five years at the same annual amount would obviously be grossly insufficient. To be real "replacement housing" funding, the grants should provide 20% of the TDC for a similar dwelling unit for each of the 5 years.

We support dropping the current matching funds requirement that accompanies the second five-year increment of RHF funding.

9. Priority of Modernization needs. The proposed rule states at Sec. 905.300(b)(1)(iii) "Work affecting health and safety and compliance with regulatory requirements such as section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24

CFR part 8 , and the lead-based paint poisoning prevention standards at 24 CFR part 35, before major systems (e.g. heating, roof, etc.) and other costs of lower priority.

Although we respect the importance of other regulatory requirements, this is another instance where HUD should allow more flexibility to respond to local needs. Specifically, we recommend striking the phrase “before major systems (e.g. heating, roof, etc.)”.

10. Physical Needs Assessment. The proposed rule states at Sec. 905.300(b)(5) that “HUD will review CFP submission requirements [sic] to determine whether ... (ii) The information submitted is consistent with the needs identified in the PNA and the data available to HUD.” Please see also #4.g. above.
11. HUD-Determined Wage Rates. At the St. Paul PHA we are having trouble getting HUD determined wage rates in a timely manner after we submit the required documentation. In some cases this has delayed our ability to bid and complete work in a timely manner. HUD should either expedite this process or allow more flexibility for HAs to proceed without receiving the latest HUD-determined wage rates.
12. Technical Wage Rates. The proposed rule states at Sec. 905.308(b)(4) “Technical wage rates. All architects, technical engineers, draftsmen, and technicians (other than volunteers under the conditions set out in 24 CFR part 70) employed in a development or modernization project shall be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by HUD.”

We have not been aware of HUD requiring the same process for requesting prevailing wages for architects, engineers and draftsmen as for craft workers. This is a large burden for HAs if HUD requires us to do the salary survey to determine what prevailing technical wage rates are. If HUD is as slow with reviewing and approving our submitted technical wage rates as they have been with reviewing and approving our HUD determined wage submittals we will never be able to get anything done.

13. Sanctions for failure to timely obligate or expend funds. The proposed rules appear to be inconsistent in their statements of HUD remedies or sanctions against a HA that does not obligate or expend its CFP funds on time. For example, proposed Sec. 905.306 states that “HUD shall withhold all new Capital Fund grants, including RHF grants, from any PHA that has unobligated funds in violation of Sec. 306(a).” In St. Paul’s case, although we obligate and spend CFP grants well ahead of schedule, the small amount of RHF funding we receive forces us to accumulate the grants over several years to begin to have enough to acquire even one replacement unit. (We have been discussing options with HUD Field Office staff.) The proposed rule appears to say that if this PHA did not obligate its RHF funds on schedule, its entire \$8 million CFP grant could be withheld.

However, proposed Sec. 905.400(i)(6)(ii) states that if a PHA fails to provide replacement housing in a timely fashion, “HUD will require appropriate corrective action ..., may recapture and reallocate the [RHF] funds, or may take other appropriate action.”

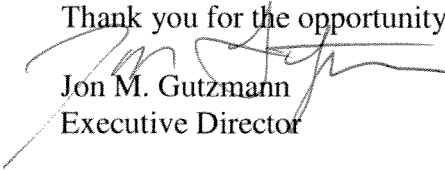
Subparagraph (7)(ii) authorizes HUD to reduce the amount of RHF funds payable to the HA in such a situation. Both of these sections indicate much more discretion for HUD to fashion a remedy that directly addresses the RHF issue, rather than calling for mandatory withholding of the HA's entire CFP grant. We recommend that Sec. 905.306 be revised accordingly.

14. High Performer Incentive. We note that the proposed rule appears to change the existing rule on the CFP high performer incentive in a significant way. The current rule at Sec. 905.10 states that a High Performer agency "can receive" the CFP bonus. The proposed rule at Sec. 905.400 states that the HA "may receive" the bonus. (emphasis added) The proposed language appears to make the bonus appear to be more discretionary on HUD's part. We would like to see a stronger commitment that a High Performer HA will receive the CFP bonus.
15. Cost-effective energy conservation measures. HUD requested public comments on including cost-effective energy conservation measures as identified in the PHA's most recent updated energy audit in the design, rehabilitation and construction of public housing. Specifically comments on cost-effectiveness tests, and measurement of cost effectiveness of energy improvements.

Please see comments under #1 regarding energy audits above. A professionally done energy audit will calculate the energy savings for each proposed energy conservation opportunity, will estimate its cost and calculate a cost versus energy savings payback period. It should be left up to the HA and its energy audit professional to evaluate the recommended energy conservation measures. It should be left up to HAs to determine which of the energy and water conservation strategies to implement. It should also be left up to HAs to balance other critical HA funding needs (elevators that don't work, roofs that are leaking, boilers that aren't working, etc.) against energy and water conservation efforts. As mentioned above it would help HAs if they could keep some of the energy and water savings to accomplish additional energy and water conservation work.

Inadequate HUD and PHA resources: At the present time and in the foreseeable future, HUD and individual housing agencies will not have sufficient CFP resources to do everything we would like to do, or everything that needs to be done to carry out our mission. Among other challenges, the shift to the operational model based on Asset Management Projects continues to consume inordinate amounts of staff time and agency resources for both HUD and PHA's. Therefore it is all the more important for HUD to recognize in the CFP regulations that HAs need to decide how to best use their limited CFP funding based on local conditions and needs, without HUD imposing "one size fits all" regulations that make the same demands on all HAs.

Thank you for the opportunity to submit these comments.


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DAL/FAH