



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention of:

Regional and Field Office Directors of
Public Housing
Public Housing Agencies
Regional Administrators
Responsible Entities

Notice PIH 2018-03 (HA)

Issued: February 28, 2018

This notice remains in effect until
amended, superseded or rescinded.

Cross Reference:

PIH Notice 2015-18 (HA);
PIH Notice 2016-18 (HA);
PIH Notice 2016-21 (HA);
24 CFR parts 903 and 905

SUBJECT: Guidance on the Use of Operating Subsidy for Capital Fund Purposes for Subsidy Appropriated and Allocated for Calendar Year 2018 and Subsequent Years.

1. **Purpose.** This notice explains how public housing agencies (PHAs) operating public housing may use a portion of their Operating Subsidy for capital activities, subject to HUD requirements.
2. **Background.** In 2016, Congress passed P.L. 114-201, the Housing Opportunity Through Modernization Act of 2016 (HOTMA). Section 109(b) of HOTMA provides PHAs flexibility to use up to 20 percent of a PHA's Operating Subsidy appropriated each year for Capital Fund Program (CFP) activities included in Section 9(d) of the U.S. Housing Act of 1937 (the Act), provided that the PHA's public housing annual plan provides for such use.
3. **Applicability.** This notice applies to all PHAs operating the public housing program, except for PHAs participating in the Moving to Work (MTW) demonstration program and some PHAs that operate fewer than 250 public housing units. MTW PHAs had flexibility to use Section 9 funds for either operating or capital programmatic purposes prior to the enactment of HOTMA. As detailed in Section 10 of this notice, PHAs operating fewer than 250 public housing units that are not troubled and do not have significant capital needs may use their entire Capital and Operating Funds flexibly, and thus the requirements of this notice do not apply to those PHAs. This notice only applies to Operating Subsidy appropriated for and allocated to PHAs for Calendar Year (CY)

2018 and thereafter. HUD is considering how to effectuate the use of subsidy appropriated for CYs 2016 and 2017, and will provide further guidance on the use of these funds at a later date.

4. **Summary.** PHAs have the flexibility to use up to 20 percent of their annual Operating Subsidy for CFP activities beginning CY 2018. HUD will publish the maximum amount of Operating Subsidy allowable for CFP activities towards the end of each funding year. Operating Subsidy to be used for CFP activities must remain in e-LOCCS.
5. **Process and Procedures for PHAs Using CY 2018 and Subsequent Year's Operating Subsidy for CFP Activities.** A PHA may use up to 20 percent of the Operating Subsidy obligated for each funding year, starting with CY 2018 appropriated funds and each year thereafter, for CFP activities by utilizing the following six step process:
 - a. Step 1: PHAs that are required to submit an Annual PHA Plan are required to indicate their intent to use Operating Subsidy for CFP activities in the plan. PHAs must include this information in the statement of financial resources in the appropriate Annual Plan template. Small PHAs, for years in which they are not also submitting a 5-year Plan, must check the appropriate box on form HUD-50077-CRT-SM, indicating that there has been a change to the statement of financial resources since the last Annual Plan submission.

Qualified PHAs, as defined in 24 CFR 903, who are not required to submit an Annual PHA Plan, must make information regarding the intent to use this flexibility available for the required annual hearing. PHAs that elect to use their Operating Subsidy for CFP activities must continue to follow statutory and regulatory requirements, including those related to the conduct of public hearings, Resident Advisory Board consultation, consideration of comments, board approval, and environmental reviews.

- b. Step 2: Prior to notification by HUD of the maximum amount of Operating Subsidy available for CFP activities (see step 3), at both the PHA-wide and the project level, the PHA will estimate, for planning purposes, the amount of Operating Subsidy to be used for CFP activities. Based on that estimate, PHAs should plan throughout the year for the amount of Operating Subsidy they intend to use for CFP activities. The PHA may estimate any amount of Operating Subsidy for CFP activities at any project provided the following conditions are met:

- (1) the Operating Subsidy to be used for CFP activities at all projects does not exceed the maximum amount of 20% allowed at the PHA-wide level; and
 - (2) the Operating Subsidy to be used for CFP activities at any one project does not exceed that project's total amount of Operating Subsidy.

Operating Subsidy to be used for CFP activities must remain in e-LOCCS. If a PHA draws down too much of its Operating Subsidy from BLI 1000 each month, it may not have sufficient funds remaining in e-LOCCS when HUD calculates the maximum authority (as described in Step 3 below), which will take place towards the end of the

Calendar Year. PHAs should note that any Operating Subsidy drawn down from e-LOCCS prior to approval by HUD as described in Steps 4 and 5 may not be used for CFP activities.

Step 2 Illustration. Estimate the amount of Operating Subsidy that can be used for CFP activities at the project level:

Table 1. Example – Allowable Project-Level Budgets of Operating Subsidy for CFP Activities				
	Project A	Project B	Project C	PHA Total
Total Operating Subsidy Obligated for Year	\$200,000	\$150,000	\$50,000	\$400,000
Example 1	\$40,000	\$30,000	\$10,000	\$80,000
Example 2	\$80,000	\$0	\$0	\$80,000
Example 3	\$0	\$40,000	\$40,000	\$80,000
Example 4	\$30,000	\$10,000	\$20,000	\$60,000
Example 5	\$0	\$20,000	\$50,000	\$70,000

All the examples¹ in Table 1 would be allowable ways for a PHA to budget its projects' Operating Subsidy for CFP activities. In each example, at the PHA level (i.e., "PHA Total" column) the total amount of Operating Subsidy used across all projects for CFP activities is \$80,000 (which is 20% of the \$400,000 of total Operating Subsidy obligated to the PHA for all projects) or less. In addition, in each example, the amount budgeted at any one project for CFP activities is equal to or less than the amount of total Operating Subsidy obligated to the project; and at least that amount is assumed to be available in BLI 1000 in e-LOCCs.²

- c. **Step 3** – Towards the end of each funding year, HUD will publish the total amount of Operating Subsidy obligated to each PHA for the funding year and identify the maximum amount (i.e., 20 percent) of Operating Subsidy allowed for CFP activities.³ The Operating Subsidy obligation information will be posted on the Operating Fund webpage: (https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/am).

Step 3 Illustration. Determine the maximum amount of Operating Subsidy that can be used for CFP activities (as calculated and provided by HUD):

¹ These examples are not an exhaustive list, as many other combinations are possible.

² No transfer of cash from one project to another project is needed or allowed for use of this authority as the amount a project can contribute to CFP activities is limited to its total obligated Operating Subsidy amount for the year.

³ This information cannot be published sooner, because the total Operating Subsidy obligated is not determined until the final obligation of the year. Generally, HUD would anticipate publishing this information in October of each year.

The example in Table 2 below shows a PHA with three projects. Row 1 shows the total amount of Operating Subsidy obligated to each project. Row 2 shows the PHA-wide amount of Operating Subsidy that can be used for CFP activities (20 percent of the PHA total).

Table 2. Example – Determination of Maximum Amount of Operating Subsidy That Can be Used for CFP Activities					
Row	Description	Project A	Project B	Project C	PHA Total
1	Total Operating Subsidy Obligated for Year	\$200,000	\$150,000	\$50,000	\$400,000
2	PHA-wide Maximum Amount of Operating Subsidy That Can be Used for CFP Activities	N/A	N/A	N/A	\$80,000

- d. Step 4 – After HUD publishes the amount of Operating Subsidy that can be used for CFP activities (see Step 3), PHAs may need to update their original estimate of Operating Subsidy to be used for CFP activities and will be required to create a draft Annual Statement/Budget⁴ (or multiple ones as described below) identifying the amount of Operating Subsidy the PHA will use for CFP activities for each project in the Activity Planning Module of HUD’s Energy Performance and Information Center (EPIC) system. A PHA must create a separate draft Annual Statement/Budget for each Operating Subsidy grant where the PHA will be using Operating Subsidy for CFP activities. The title for the draft Annual Statement/Budget must exactly match the grant number of the Operating Fund grant to which it corresponds without any dashes or other punctuation inserted.

Step 4 Illustration. Table 3 provides an example of a PHA’s election to use Operating Subsidy for CFP-eligible activities:

- Row 1 provides the total amount of Operating Subsidy each project was funded for a given year.
- Row 2 provides the maximum amount of Operating Subsidy this PHA can use for CFP activities.

⁴ In the past PHAs submitted an Annual Statement on HUD Form 50075.1 that outlined how they intended to spend a given Capital Fund grant. In 2013 HUD published a revised Capital Fund rule that sometimes used the term “Annual Statement” and elsewhere the term “Budget” (24 CFR 905.300(b)(1)(ii)) to describe the same submission requirement. The EPIC system uses the term “Annual Statement/Budget” to acknowledge the historical usage as well as be compliant with the revised Capital Fund regulation.

- Row 3 shows that the PHA used \$70,000 of Operating Subsidy for CFP activities at Project B. At project C, the PHA used \$10,000 of Operating Subsidy for CFP activities.
- Row 4 shows the amount of the annual Operating Subsidy grant that will be used for eligible Operating Fund expenses.

Table 3. Example – Use of Operating Subsidy for CFP Activities				
Row	Description	Project A	Project B	Project C
1	Total Project Level Operating Subsidy Funded for Year	\$200,000	\$150,000	\$50,000
2	PHA-wide Authority	\$80,000		
3	Amount of Operating Subsidy PHA Spends on CFP Activities	\$0	\$70,000	\$10,000
4	Amount of Operating Subsidy PHA Spends on Operations (Line 1 Minus Line 3)	\$200,000	\$80,000	\$40,000

- e. Step 5 - Once the budget is created in EPIC, HUD will review the draft Annual Statement/Budget to ensure that it complies with the requirements outlined in this notice. If HUD concludes that the draft Annual Statement/Budget complies with the requirements of the notice, HUD will create a notional Operating Subsidy grant in the EPIC system using the grant number provided in the budget as well as the amount specified (i.e. the amount of Operating Subsidy to be used for CFP activities specified in the draft budget).

HUD will complete this process of adding a new notional grant in the EPIC system within 5 business days after the end of the month in which the Annual Statement/Budget is created in the system and passes the requisite review checks. HUD will send an e-mail notification of the creation of the grant item(s) in EPIC to the PHA. The PHA will then be able to link the draft Annual Statement/Budget to its corresponding grant and submit the budget. HUD will transfer Operating Subsidy in the amount listed in the submitted Annual Statement/Budget from BLI 1000 to BLI 1300.

If HUD determines that a draft Annual Statement/Budget does not comply with the requirements of this notice, it will send an e-mail notification to the PHA indicating the reason the draft budget did not comply with the notice requirements. HUD will provide further instructions on how to accomplish this in guidance that will be published separately.

- f. Step 6 - Once funds are transferred to BLI 1300, PHAs must adhere to CFP requirements related to drawdown and expenditure as detailed in 24 CFR 905.310, and other relevant HUD guidance for such funds. PHAs may not spend Operating Subsidy for CFP activities that are drawn from BLI 1000. PHAs that determine that they need to transfer back all or a portion of the previously transferred Operating Subsidy from BLI 1300 back to BLI 1000 to be used for Operating Fund-eligible activities may do so after creating a revised Annual Statement/Budget in EPIC that contains a lower amount than the original budget amount. In this instance, HUD will work with the PHA to make the necessary adjustments to EPIC and LOCCS.

6. **Eligible CFP Activities and Limits for Certain Budget Line Items Accounts.**

Allowable CFP activities include all eligible activities under Section 9(d) of the Act, with the following two exceptions.

1. PHAs may not use this Operating Subsidy flexibility as a mechanism to transfer Operating Subsidy from one project to another project, therefore the use of Budget Line Item “1406 – Operations” when budgeting this Operating Subsidy is not allowed.
2. For a PHA operating under an asset management model, using a central office cost center (COCC)/fee for service approach, this Operating Subsidy flexibility does not allow the PHA’s COCC to charge an additional and equivalent Capital Fund management fee on the Operating Subsidy used for CFP activities, since the PHA is already eligible for fees based upon its operations. A Capital Fund management fee may only be charged to the PHA’s Capital Fund grant. Operating Subsidy used for CFP activities under this notice, simply remains Operating Subsidy with expanded eligible uses. The rules around the PHA’s COCC charging of a public housing (i.e., Operating Fund) management fee, bookkeeping fee, and asset management fee remain unchanged.

However, for all other PHAs (i.e., non-asset management PHAs or asset management PHAs using the allocated overhead model), the PHA may recover administrative costs associated with using Operating Subsidy for CFP activities as defined under 24 CFR 905.314(a) Costs and Other Limitations: Eligible Administrative Costs, and 24 CFR 905.314(h)(1) Costs and Other Limitations: Administrative Costs for Non-Asset Management PHAs.

Currently, BLI accounts 1408 (Management Improvements), and 1410 (Administrative Costs) are limited to a percentage of the overall CFP grant. For Management Improvements, the same regulatory percentage limits apply to the total amount of the Operating Subsidy that a PHA has identified for use for CFP activities, not at the total Operating Subsidy level. The same applies to administrative costs for non-asset management PHAs or asset management PHAs using the allocated overhead model. For example: The total amount of a project’s 2018 Operating Subsidy is \$500,000 and the project is dedicating \$75,000 in Operating Subsidy for CFP activities, the maximum amount of funds that could be allocated to BLI 1410, which is currently limited to 10%, would be limited to \$7,500 [0.10 (10 percent regulatory limitation) X \$75,000 (amount of

Operating Subsidy used for CFP activity)]. It would not be \$10,000 [$\$500,000$ (total Operating Subsidy) X 0.20 (20 percent allowed flexibility) X 0.10 (10 percent regulatory limitation)].

7. **Reporting Requirements.** PHAs utilizing Operating Subsidy for CFP activities will comply with standard Capital Fund reporting requirements except that they will not submit grant close out documents (i.e. Actual Modernization Cost Certificates or Actual Development Cost Certificates).
8. **Financial Management.**
 - a. Operating Subsidy that has been identified for CFP activities by the PHA is not subject to the two-year obligation or four-year expenditure requirements normally associated with a PHA's CFP grant. These funds remain Operating Subsidy with "expanded uses." As Operating Subsidy, they must be expended within seven years of the funding year from which they came.
 - b. In implementing this provision of HOTMA, HUD is not creating any threshold requirements for the use of this flexibility, such as meeting minimum financial ratios or maintaining appropriate reserve levels, which may impact a PHA's Public Housing Assessment System (PHAS) score and designation. PHAs are advised to analyze the impact of using this flexibility on their PHAS score prior to use.
 - c. For a PHA operating under a COCC/fee for service model, using this flexibility could result in less excess cash at a property which could limit the PHA's ability to transfer funds from one project to another project or charge an asset management fee. PHAs are advised to analyze the impact of using this flexibility on their projects' excess cash calculations prior to use.
 - d. The amount obligated to any PHA project will not change based on a PHA's decision to use Operating Subsidy for CFP activities. However, PHAs must follow the requirements related to drawing down such Operating Subsidy for CFP activities as detailed in Section 4 and 5 of this notice and below.

To be compliant with federal cash management rules, Operating Subsidy budgeted by the PHA for CFP activities may not be drawn down from eLOCCS until the PHA has incurred an eligible cost and the PHA is ready to make payment. In accordance with federal cash management rules, once the PHA has drawn these Operating Subsidy funds for a CFP activity, the PHA has three business days to disburse the Operating Subsidy (i.e., make payment to the vendor/contractor).

The Annual Contribution Contract (ACC) requires all Operating Subsidy and other program income to be deposited into the PHA's General Fund. The use of Operating Subsidy for CFP activities does not change this requirement. However, a PHA must separately account for the use of this Operating Subsidy flexibility in such a manner as to be able to support compliance with the notice. A PHA's records need to show that:

- 1) Only Operating Subsidy (not reserves/program income) was used for the allowed CFP activity;
- 2) No more than 20 percent of that year's Operating Subsidy was used to fund CFP activities; and
- 3) Operating Subsidy was spent in accordance with the PHA's approved budget in EPIC.

If a PHA uses this flexibility, it must ensure that its records support the CFP transaction(s) in all three ways described above.

HUD recommends that a PHA establish subsidiary accounts within its General Fund to account for the use of Operating Subsidy for CFP activities. The use of subsidiary accounts will help a PHA to track the amount, the funding year, the date when the Operating Subsidy was identified for CFP activities, and the date when the eligible CFP expense was paid. This recommended accounting is similar to that currently used for CFP accounting.

- e. Operating subsidy identified for CFP activities remains Operating Subsidy with expanded uses, however, PHAs must follow the requirements of 24 CFR Part 905 when using these funds.
 - f. As with capital funds, budget revisions for Operating Subsidy to be used for CFP activities may be necessary from time to time.
 - g. Operating Subsidy that is to be used for CFP activities carries a further restriction from Operating Subsidy used for operations. From the time the PHA draws down these funds and before payment is made, the funds must be reported as restricted on the PHA's financial data schedule and financial statements.
9. **Financial Data Schedule (FDS) Reporting.** Appendix A of this notice provides instruction for FDS reporting.
 10. **PHAs with Fewer Than 250 Units.** PHAs owning or operating less than 250 units that are not troubled and have no significant capital needs are still eligible to use full flexibility between the operating and Capital Funds. These PHAs may use up to 100 percent of operating funds granted in a fiscal year for capital improvements, or transfer 100 percent of Capital Funds to operations, and are thus exempt from the requirements of this notice. Please see PIH Notice 2016-18 "Guidance on Full Flexibility for Eligible Small PHAs" for more information on this flexibility for small PHAs.
 11. **Effective Date.** This notice is effective upon issuance.

12. **Paperwork Reduction Act.** The information collection requirements referred to 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. 3520) and assigned OMB control numbers 2577-0226, 2577-0157, 2577-0274 and 2535-0107.
13. **Further Information.** For further information about this notice, PHAs may send an email to PIHOCI@HUD.gov.

_____/s/_____
Dominique Blom
General Deputy Assistant Secretary
for Public and Indian Housing

Appendix A - Financial Data Schedule (FDS) Reporting

The following provides instructions for the proper FDS reporting of Operating Subsidy used to fund allowed Capital Fund program items.

General Reporting

1. Operating Subsidy revenue regardless of its final use will be reported in the Low Rent column of the project under which HUD obligated such funds using FDS Line 70600 (HUD PHA Operating Grants).
2. Operating Subsidy that has been budgeted, approved for use to fund eligible CFP activities, and drawn down but not yet paid will be reported as restricted cash using FDS Line 112 (Cash – Restricted – Modernization and Development) or FDS Line 115 (Cash – Restricted for Payment of Current Liability) on the project Balance Sheet.
3. If the Operating Subsidy used for CFP activities was spent on items that are capitalized, PHAs must enter the respective amounts into the capital activity memo accounts located at the bottom of the project's Low Rent Income Statement on the FDS. These FDS line items are completed when the project incurred capital costs funded with non-Capital Fund related monies. The list of the capital activity memo accounts for the Low Rent column on the FDS are provided below:
 - **FDS Line 11610 (Land Purchases):** Capitalized costs incurred during the current fiscal year related to the purchase of land and related costs to prepare the land for use. Land purchases should include the purchase price and the costs needed to prepare the land for its intended use. These additional costs typically include fees for an attorney, title search, clearing, filling, drainage, and the cost of removing buildings that are needed to prepare the land for its intended use. Note that any land purchases are subject to approval by HUD under 24 CFR part 905 development requirements.
 - **FDS Line 11620 (Building Purchases):** Capitalized costs incurred during the current fiscal year for buildings and related building improvement projects. Construction in Progress costs related to a building or improvement project should also be reflected on this line.
 - **FDS Line 11630 (Furniture and Equipment – Dwelling Purchases):** Capitalized costs incurred during the current fiscal year for purchases of furniture and equipment related to the dwelling units of the PHA, which includes costs of movable furniture, equipment, and machinery placed in the dwelling unit or common area.
 - **FDS Line 11640 (Furniture and Equipment – Administrative Purchases):** Capitalized costs incurred during the current fiscal year of movable furniture, equipment, and machinery used in the administration, maintenance, and other functions (i.e., protective services) of the PHA.

- **FDS Line 11650 (Leasehold Improvement Purchases):** Capitalized costs incurred during the current fiscal year on leased property, such as additions, alterations, remodeling or renovations. Construction in Progress costs related to a leasehold improvement project should also be reflected on this line.
- **FDS Line 11660 (Infrastructure Purchases):** Capitalized costs incurred during the current fiscal year includes long-lived capital assets that normally are stationary in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure assets include parking lots, drainage systems, lighting systems, and water and sewer systems. Construction in Progress costs related to an infrastructure project should also be reflected on this line.

FASS-PH System Changes. The FDS reporting guidance issued in this notice may be modified in future FASS-PH system changes and enhancements. Such FDS reporting guidance and changes typically are issued in a PIH Notice or a FASS-PH Accounting Brief.