

NLIHC Comments on Proposed Public Housing Capital Fund Rule

On April 8, NLIHC and the Housing Justice Network (HJN) submitted a joint comment letter pertaining to proposed changes in the Public Housing Capital Fund regulations, as well as the PHA Plan rule ([see Memo, 2/11](#)). HJN is an informal network of legal services and affordable housing advocates.

Regarding the public housing Capital Fund program, the comment letter lists sixteen suggestions calling for language requiring PHAs to provide resident councils and Resident Advisory Boards (RABs) with advance notice and opportunities for consultation and comment regarding a variety of features that could have a significant impact on residents, such as key documents (e.g., Physical Needs Assessments and Performance and Evaluation Reports) and plans (e.g., any annual updates to a 5-Year Capital Fund Action Plan and proposals to create a mixed-finance project). Advocates also urge HUD to add text enabling it to reject a public housing development proposal if the PHA cannot demonstrate adequate resident participation in the process.

In order to strengthen resident capacity, the groups recommend that a portion of the Capital Fund be set aside, in a fashion similar to the \$25 per unit for resident participation provision of the Operating Fund, to provide technical assistance to residents so that they can fully understand the PHA's budget and organizational structure.

The comment letter further suggests that HUD provide technical assistance on a regional level to help improve resident leaders' ability to understand and assess Physical Needs Assessments, 5-Year Capital Fund Action Plans, and Performance and Evaluation Reports. Advocates also urge that the regulation require resident participation at mixed finance projects similar to that required at traditional public housing (i.e. the "Part 964" rule) even if not all of the units are public housing units.

The comment letter responds to HUD's request for feedback regarding the existing standard that public housing modernization be limited to projects at which modernization costs do not exceed 90% of the total development cost of constructing similar new housing. HUD's preamble hinted at a desire to lower the standard to the one adopted for demolitions and dispositions in 2006: 62.5% for elevator buildings and 57.14% for all others. The lower demolition/disposition standards have facilitated the loss of public housing units. Therefore, the letter notes, lowering the standard for modernization would effectively prevent PHAs from making energy efficiency improvements and preserving the existing stock.

The groups support HUD's proposal to reduce from 20% to 10%, over a three-year period, the amount of Capital Funds that can be used for management improvements. Currently, a PHA with more than 250 public housing units can spend up to 50% of its Capital Fund for costs not associated with physical improvements (10% for administrative costs, 20% for operating costs, as well as 20% for management improvements). Advocates agree that HUD's proposal is needed to help insure that the majority of the Capital Fund is utilized for modernization, building and systems repair, and deferred maintenance needs. However, HUD should monitor PHAs to ensure that they do not discontinue or severely reduce adequate funding for resident participation due to any reduction in management improvement dollars.

The comment letter also suggests that the proposed streamlined version of the rule's displacement and relocation provision restore existing language which enjoins PHAs to minimize displacement, and which provides for temporary relocation assistance.

Advocates also recommend restoring text lost in the proposed rule's streamlining of the site and neighborhood selection provision. The existing text requires projects to be located in neighborhoods that are accessible to a range of jobs available to lower income people via "public transportation or private automobile" which does not have "excessive travel times or costs."

Finally, HUD's proposed rule would penalize a PHA that fails to obligate Capital Funds within 12 months by reducing the amount of Capital Funds available to it after meeting the obligation requirement. However, the comment letter notes that this would adversely impact residents; therefore, advocates suggest an alternative penalty: reducing the amount of the Capital Fund a PHA can use for administration.

Regarding the PHA Plan, the 2008 Small Public Housing Authorities Paperwork Reduction Act exempted "qualified" public housing agencies (PHAs) from preparing an annual PHA Plan. The Act defined a qualified PHA as one that administers fewer than 550 public housing units and Housing Choice Vouchers, in combination.

Although the proposed rule's preamble declared that the change would merely incorporate the statutory definition of "qualified" PHA in the PHA Plan regulation, the actual proposed text would delete language that explains that "The purpose of the [PHA] Plan is to provide a framework for: (1) Local accountability; and (2) An easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services."

The groups urge HUD to retain the existing statement of purpose, and also suggest language that would enable public housing residents to better understand the streamlined PHA Plan resident and public participation responsibilities of a qualified PHA.

The comment letter is at http://www.nlihc.org/doc/Capital_Fund_HJN_comments.pdf