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FINANCING TRANSACTIONS AND 24 CFR PART 85 AND 2 CFR PART 225

Capital Fund Finance, Operating Fund Finance, and Mixed Finance Programs

Public Housing Authorities (PHAs) participating in HUD's Capital Fund, Operating Fund, and Mixed Finance Programs must comply with HUD regulations at 24 CFR Part 85 and OMB's Cost Principles regulations at 2 CFR Part 225. Part 85 covers financial administration, procurement, reporting and recordkeeping and close-out requirements. A PHA's grant administration will be based on Part 85 procedures whenever Federal grant funds are used. Typically, a PHA draws down funding within 3 days of payment for allowable costs that have been procured or for allowable costs according to program requirements, Part 85, and state and local laws. These costs must also be reasonable and allowable under 2 CFR Part 225.

When using Capital Fund Financing or Operating Fund Financing proceeds for goods and services, the PHA must follow 24 CFR Part 85 and 2 CFR Part 225. Typical goods would be materials and equipment needed for modernization or development of public housing. Typical services needed for modernization and development would include services of laborers, mechanics, architects, engineers, surveyors, developers, construction managers, and lawyers.

With the passage of the Quality Housing and Work Responsibility Act (QHWRA) in 1998 and the advent of financing as an eligible use of Capital Funds and Operating Funds, there have been questions regarding the coverage of these regulations in regard to financing obtained by PHAs. We are issuing this guidance to confirm that financing for programs administered by PIH (including Capital Fund Financing, Operating Fund Financing, and Mixed Finance) are subject to consistent requirements.

If the PHA seeks the general services of counsel, a financial advisor, or other financial assistance (e.g., someone who finds a loan for them or provides them financial advice), it must follow the requirements of 24 CFR Part 85, including procurement of these services and price analysis. However, it is more common with the number of financing sources available, that PHAs seek financing from a variety of lenders, underwriters, LIHTC syndicators or other sources of finance or credit enhancement. This is considered a financial transaction rather than a financial service. A financial transaction is a process to qualify the PHA as a borrower, and thus is not subject to the procurement requirements of Part 85. Incorporated in a financial transaction are a team of professionals, such as bond underwriters, lenders, lender's or underwriter's counsel, LIHTC syndicators, line of credit providers, and credit enhancement providers, all of which either constitute the financing or are secured by the financing source (underwriter or lender) as an intrinsic part of the financing and are included as part of the financial costs of closing. When a PHA decides to close on a loan or bond, with a particular lender, the PHA must determine that the fees are reasonable pursuant to 2 CFR 225. PIH certainly expects PHAs to seek financing from a number of sources in order to support their cost analysis. In addition, for most Capital Fund Financing Program Proposals, the Office of Public Housing Investments (OPHI) will continue to ensure the reasonableness of financing costs through the requirement for an independent, third-party fairness opinion. OPHI will likewise ensure that any Cost Control and Safe Harbor Standards or other requirements related to financing in Mixed Finance transactions will continue to be met as applicable.



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