



INSIDE THIS ISSUE

- » HUD Provides Guidance on the Use of Public Housing Operating Funds
- » HUD Provides New Tool for Physical Needs Assessments of Public Housing
- » PIH Notices

HUD Provides Guidance on the Use of Public Housing Operating Funds

On January 20, 2012, HUD’s Office of Public and Indian Housing issued Notice PIH-2012-2 which provides Public Housing Agencies (PHAs) with updated guidance on how to use Operating Funds.

Traditionally, Operating Funds are governed by section 9(e) of the United States Housing Act of 1937 (the 1937 Act) which was established in 1998 under the Quality Housing and Work Responsibility Act (QHWRA) that directs operating funds to be used for procedures and systems to maintain and ensure the efficient management and operation of public housing units. To further proficient public housing management and operation, the HUD Appropriations Act for FY2012 allows PHAs to use excess operating reserves for capital improvements that are not “large modernization projects.”

The eligible uses of Operating Funds also apply to Operating Reserve balances. Operating Reserves are surplus funds that are obtained through public housing operations in addition to assistance from the Operating Fund program and operating receipts as defined in section 2 of the Annual Contributions Contract (7/95) (ACC). Notice PIH-2011-55 provided guidance on calculating operating reserves and stated the HUD recommended minimum operating reserve level. For PHAs with 250 or more units, the minimum operating reserve is four month of formula expenses or \$100,000, whichever is greater.

Operating reserves in excess of the HUD recommended minimum operating reserve may be used by PHAs for capital improvements in FY 2012 as allowed by the FY2012 Appropriations Act. The language limits the use of operating reserves to capital improvements that do not include “large modernization projects.” Notice PIH-2012-2 defines a large modernization project as project where the total project costs are more than 80% of the applicable Total Development Cost (TDC) limits. For capital activities that are large modernization projects or development, a PHA may not use its operating funds. However, subject to HUD approval of an Operating Funding Financing Program (OFFFP) transaction, a PHA may undertake a financing, use the proceeds for large modernization projects or development, and then repay the financing with excess operating reserves.

In order to provide PHAs with maximum flexibility, PHAs do not need to ask for approval before using excess operating reserves for capital improvements that are less than large modernization projects however any excess operating reserves used for capital improvements must be obligated by September 30, 2012. HUD will provide each PHA its minimum operating reserve level in their CY2012 eligibility determination letter. But HUD will not provide a PHA with the amount of operating reserves above the minimum operating reserve level due to possible fluctuations in a PHA’s operating reserves. The PHA is responsible to calculate that amount of excess operating reserves and guidance for this calculation is available in Notice PIH-2011-55. PHAs that do not have excess operating reserve cannot use operating reserves for capital improvements less than large modernization projects.

Notices PIH-2011-55 and PIH-2012-2 can be viewed at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices.



HUD Provides New Tool for PNAs of Public Housing

HUD is working to develop a Physical Needs Assessment (PNA) tool that will help HUD and Public Housing Agencies (PHAs) better serve public housing residents by providing long-term strategic planning to address the capital needs of the public housing portfolio. In order assist in the management and operation of public housing, the PNA works to further five main goals:

- Measuring the impact of annual Capital Fund appropriations on the physical needs of the public housing inventory,
- Producing data on Capital Fund green activities in support of HUD's High Priority Performance Goal to create energy efficient housing,
- Furthering the objectives of the 2005 Energy Act,
- Evolving the management practices of PHAs toward project-based capital planning, and
- Enabling PHAs to better assess the position of their portfolios to take advantage of opportunities.

The PNA will allow HUD to measure the impact of the over \$2 billion of Capital Funds provided to PHAs. Data from each PHA's PNA will be aggregated to determine a national needs number. The national needs number will be updated annually so that it reflects the capital improvements made with prior Capital Fund appropriations. The PNA tool will also take into account HUD's High Priority Goal of creating energy efficient housing and the 2005 Energy Policy Act's goal of "utility management and capital planning to maximize energy conservation by allowing PHAs to see the cost effectiveness of energy conservation measures and green retrofits as well as allowing HUD to measure the progress of achieving an energy efficient, green public housing portfolio.

The PNA tool will also provide PHAs to further their project-based management and operations by allowing the PHA and each of its projects to engage in effective project-based strategic capital planning. The life cycle needs of the PHA's public housing portfolio will come into focus as the PNA tool will use a term of 20-years. This long term project-based capital planning has PHAs use multi-family housing industry standard practices which allow the PHA to adapt quickly and take advantage of new opportunities in the capital markets.

On July 20, 2011, HUD issued a proposed rule revising the HUD regulations on a PHA conducting a PNA. The proposed rule focuses on the above goals by allowing PHAs to have a continued focus at the project level while providing a roadmap to the PHA for effective and efficient use of their Capital Funds.

The draft Physical Needs Assessment tool can be found at: <http://1.usa.gov/ztKaa7> and the proposed PNA rule can be viewed at: <http://1.usa.gov/z0JV8y>.

PIH Notices

PIH 2012-2, "Guidance on Public Housing Operating Funds" issued January 20, 2012. This Notice describes eligible uses of Operating Funds under the United States Housing Act of 1937 (the 1937 Act) and the Operating Fund rule (24 CFR 990) for Public Housing Agencies (PHAs) who administer the low-rent Public Housing Program. The eligible use authority for Operating Funds extends to Operating Reserve balances. Operating Reserve balances are those funds accumulated through the operation of public housing, assistance from the Operating Fund program authorized by section 9(e) of the 1937 Act, and operating receipts as defined in section 2 of the Annual Contributions Contract (7/95) (ACC). PHAs may use Operating Funds as outlined by sections 9(e), 9(g) and 9(l) of the 1937 Act, HUD regulations and MTW agreements.

PIH 2012-4, "Effective Use of the Enterprise Income Verification (EIV) System's Deceased Tenants Report to Reduce Subsidy Payment & Administrative Errors" issued January, 1 2012. This notice explains the procedures Public Housing Agencies (PHAs) are required to implement to deal with families with deceased household members. These procedures will ensure that PHAs successfully submit accurate data to HUD via the Public and Indian Housing Information Center (PIC) and that PHAs do not make subsidy overpayments on behalf of deceased single member households. Where overpayments have been made, the PHA will recoup the overpayment from the landlord/owner of the rental property under the programs noted in Section 2 of this notice, with the exception of the Public Housing program. This notice supersedes PIH Notices 2010-50 and 2010-09.

PIH 2012-7, "Demolition/disposition of public housing and associated requirements for PHA Plans, resident consultation, Section 3 and application processing" issued February 2, 2012. This notice explains the application processing requirements in requesting HUD approval to demolish, dispose or both demolish-and-dispose of public housing under Section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) (1937 Act).

PIH 2012-8, "Guidance for Obtaining HUD Consent for Takings of Public Housing Property by Eminent Domain" issued February 3, 2012. This Notice provides guidance on the factors that HUD will consider in determining whether to consent to a taking of public housing property that was developed/acquired by, or is maintained with funds from the United States Housing Act of 1937 (the "Act") by a governmental or quasi-governmental body using eminent domain authority ("Taking Body"). Most public housing property is owned by PHAs, but units owned by private entities in a mixed-finance arrangement may also be operated as public housing pursuant to 24 CFR 941 (Subpart F).

HUD's PIH Notices can be viewed online at: <http://1.usa.gov/uBAGLE>

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