



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention:

Public Housing Agencies (PHA)
Public Housing Hub Office Director
Public Housing Program Center Directors
Regional Directors
Field Office Directors
Resident Management Corporations

NOTICE PIH-2012-2 (HA)

Issued: January 20, 2012

This notice remains in effect until amended, revoked or superseded

Subject: Guidance on Public Housing Operating Funds

1. Purpose

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).

2. Applicability

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. PHAs may use Capital Funds as outlined by Section 9(d), 9(g), and 9(l) of the 1937 Act and HUD regulations. In addition to these statutorily permitted uses, in FY 2012 pursuant to the HUD Appropriations Act, PHAs may use the portion of operating reserves above the HUD recommended minimum operating reserve levels for capital improvements, excluding large modernization projects as defined in Section 6 of this notice.

3. Statutory Background

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) established the Operating Fund program in section 9(e) of the 1937 Act which provides assistance for the operation and management of public housing. Section 9(e) stipulates that operating funds may be used for procedures and systems to maintain and ensure the efficient management and operation of public housing units.

Section 9(d) of the 1937 Act established the Capital Fund program for the purpose of making assistance available for capital and management activities.

Section 9(e)(1)(I) of the 1937 Act permits the use of Operating Funds for the costs of repaying, together with rent contributions, debt incurred to finance the rehabilitation and development of public housing units with HUD approval (described in section 5 of this Notice).

Section 9(g)(1) of the 1937 Act permits PHAs to use not more than 20% of their annual Capital Fund for Operating Fund activities if the PHA plan provides for such use.

Section 9(g)(2) of the 1937 Act permits PHAs with less than 250 public housing units (and that are not designated as troubled and are, in the determination of the Secretary, operating and maintaining public housing in a safe, clean, and healthy condition) to use their Operating and Capital Funds flexibly.

4. Operating Fund Regulations

The Department is deeply committed to providing PHAs maximum flexibility under the 1937 Act and committed to the preservation of public housing. In conformance with the statute, the Operating Fund regulations at 24 CFR 990 reiterate that the Operating Fund was established for the purposes of the operation and management of public housing. Additionally, all maintenance activities specifically listed in Section 9(e) of the 1937 Act are eligible Operating Fund activities.

PHAs may also use Operating Funds for unforeseeable and unpreventable emergencies that include damage to the physical structure of the PHA's housing stock, for example, damage as a result of a natural occurrence such as a windstorm or flood. Although damages caused by unforeseen emergencies may eventually be covered under a warranty, with insurance proceeds, or through disaster funds, PHAs may use Operating Funds to cover the expenses incurred prior to receipt of warranty, insurance or disaster proceeds. After receipt of warranty, insurance or disaster proceeds, the PHA must reimburse their operating account for any expenses that were initially covered with Operating Funds up to the amount received.

5. Alternative Financing Options:

The Operating Fund Financing Program (OFFP), PHA Mortgaged Transactions (PMT), and Energy Performance Contracts (EPCs) provide opportunities for PHAs to leverage their Operating Funds to perform modernization or development activities. Consistent with the 1937 Act, these programs allow PHAs to utilize Operating Funds to pay debt service on financing used to modernize or develop public housing units with HUD approval. In FY 2012, PHAs may use operating reserve amounts above the HUD recommended minimum level of operating reserves to pay for capital improvements that are not large modernization projects; therefore, there may not be a need for PHAs to undertake an OFFP to pay for such improvements. However, PHAs that wish to fund large modernization projects as defined in

Section 6 of this notice may only do so through the OFFP unless the PHA is small and transfers its Operating Fund to Capital Fund.

6. Use of Operating Reserves above the HUD recommended Minimum Operating Reserve Levels for Capital Improvements (PHAs with 250 or more units)

Notice PIH-2011-55, Public Housing Operating Subsidy Calculations for Calendar Year 2012 outlined the allocation adjustment to the operating subsidy proposed in the President's federal fiscal year 2012 budget. PIH-2011-55 also detailed the calculation of operating reserves; described HUD recommended minimum operating reserve levels, and established an appeals process through which PHAs can request to exclude a portion of their reserves from the allocation adjustment for specified activities. The HUD recommended minimum operating reserve level for PHAs with 250 or more units is four months of formula expenses¹ or \$100,000, whichever is greater.

The FY 2012 Appropriations language permits PHAs to use excess operating reserves in FY 2012 for capital improvements. The conference report accompanying this language limited the use of excess reserves for capital improvements so as not to include "large modernization projects." The Department will permit PHAs to use operating reserves above the HUD recommended minimum operating reserve levels for capital improvements excluding large modernization projects. For the purpose of this notice, HUD defines a large modernization project to be a project where the total project costs are ***more than 80%*** of the applicable Total Development Cost (TDC) limits. Any PHA that wishes to use operating funds for a large modernization project must do so through an OFFP.

PHAs are not required to request approval prior to using operating reserves above the HUD recommended minimum level of operating reserves for capital improvements that are less than large modernization projects as described above in order to provide maximum flexibility to PHAs. HUD will provide PHAs with their final eligibility calculation in the near future along with their recommended minimum operating reserve balance. At this time HUD is providing PHAs with this information and the procedures for implementation so that PHAs are able to plan accordingly. **PHAs that do not hold operating reserves above the HUD recommended minimum operating reserve level may not use this expanded authority.** All operating reserves used for capital improvements must be obligated by September 30, 2012.

HUD will provide PHAs with their minimum operating reserve levels in the CY 2012 eligibility determination letter. Due to fluctuations in a PHA's operating reserves, HUD will not provide PHAs with the amount of reserves they are currently maintaining above the operating reserve level. Therefore, PHAs will need to track the amount of reserves above the operating reserve minimum level. When making this calculation, the PHA should refer to the calculation of operating reserves in Notice PIH 2011-55. Be advised that the methodology to

¹ Formula expense is the sum of the Part A, Line 17 (Total Formula Expenses) and Part C, Line 2 (Transition Funding) from the Form HUD-52723, Calculation of Operating Subsidy.

calculate operating reserves is based on data calculated with full accrual accounting. Therefore, PHAs must use accrual accounting when calculating their reserves.

7. Effective Date

This Notice is effective upon publication.

8. Questions

For further information about this notice, PHAs may contact their local HUD Field Office.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing