



April 27, 2021

PH PROGRAM NEWS

PIH Issues Notice on OpFund Shortfall Funding from FFY 2021 Appropriations

Late yesterday HUD's Office of Public and Indian Housing ([PIH](#)) issued Notice [PIH 2021-12](#) titled "Implementation of Public Housing Operating Fund Shortfall Funding from Federal Fiscal Year (FFY) 2021 Appropriations." The 2021 Appropriations Act set aside \$25 million of public housing operating fund (OpFund) to assist public housing agencies (PHAs) experiencing or at risk of financial shortfalls. The notice provides guidance regarding eligibility, the application process, and other requirements for the set-aside. Below are some highlights of the 15-page notice:

- The notice applies to PHAs administering the public housing program, including PHAs participating in the Moving to Work ([MTW](#)) Demonstration.
- For the purposes of the notice, HUD has defined having a financial shortfall as where PHAs have less than two months of operating expenses held in reserve (months of operating reserve, or MOR). Therefore, subject to the additional conditions noted in the notice, any PHA that has less than two months of operating expenses held in reserve will be eligible to receive shortfall funding.
- In making eligibility determinations, HUD will take into consideration temporary fluctuations in operating expenses of PHAs participating in the MTW Demonstration or the Rental Assistance Demonstration ([RAD](#)). If PHAs have utilized operating funds or operating reserves to support activities other than those described in Section 9(e) of the United States Housing Act of 1937 and have reduced operating reserve levels due to the use of funds for non-public housing purposes, such PHAs may not be eligible for shortfall funding.
- If a PHA received shortfall funding from the shortfall funding program for FFY 2020, they are still eligible to receive shortfall funding for FFY 2021 provided they have finalized their FFY 2020 improvement plan by June 8, 2021. As explained in Section 9 of Notice [PIH 2020-16](#), PHAs have six months from the date of award to finalize their improvement plan.
- HUD is providing a simplified process to expedite distribution of shortfall funding to PHAs. A list of eligible PHAs and the amount those PHAs are eligible to receive is published [here](#). Eligible PHAs may apply by completing the shortfall funding application found in Appendix A and submitting it via email to [2021ShortfallFunding@hud.gov](mailto:2021ShortfallFunding@hud.gov) no later than midnight (Eastern Time) on June 4, 2021. Submission requirements are described in Section 7 of the notice.
- PHAs that believe they should be eligible to apply but are not included in HUD's list may appeal to HUD no later than midnight (Eastern Time) on June 4, 2021. Instructions are described in Section 8.
- Due to the limitation of funds available, shortfall funding will be distributed in six cohorts, based on PHA size, to maximize its impact to the PHAs with the greatest need. Within each cohort, grants will be provided in two separate funding tiers. Tier 1 grants will be provided to PHAs with MORs less than zero and will be made in the amount needed to raise the PHA's MOR to zero. Tier 2 grants will be made in the amount needed to raise each PHA's MOR to two.
- HUD will undertake additional monitoring of all PHAs that receive shortfall funding. PHAs are required to collaborate with HUD field offices to identify specific issues at the PHA and develop a plan identifying actions that the PHA can take to improve their financial performance. Section 10 includes a list of operational improvements that HUD has historically recommended to insolvent PHAs.
- PHAs that receive shortfall funding may draw down amounts from their grant award as needed to fund their immediate needs. PHAs will enter their expenditure information into Line of Credit Control System (LOCCS) monthly to validate the expenditure of the funding drawn down. Shortfall funding grants may not be placed into the PHA's operating reserves.
- In 2021, a PHA only needs to submit one SF-424 per year through the [OpFund web portal](#). That SF-424 will serve all OpFund grants including both grants made pursuant to the OpFund formula (24 CFR 990) and shortfall notice. The shortfall application must be signed with a wet signature. PHAs are not required to resubmit or revise their form SF-424 for the FY 2021 OpFund grant.
- The period of performance for these funds starts on the date of the award and ends four years from the end of the funding year for which the funds were appropriated. The PHA can use shortfall funds to cover OpFund expenses incurred during the period of performance. Any undisbursed funds remaining in LOCCS or unexpended funds held by a PHA on December 31, 2025 will be recaptured by HUD.

Further information on shortfall funding can be found in the [2021 Operating Fund Shortfall Funding](#) webpage.

GENERAL NEWS

HUD Officially Withdraws Proposed Changes to the Equal Access Rule

Last Friday we reported that the Department of Housing and Urban Development ([HUD](#)) [announced](#) the withdrawal of the previous administration's proposed rule that would have weakened the [Equal Access Rule](#), which requires all HUD-funded housing services to be provided without discrimination based on sexual orientation or gender identity. Today HUD has officially [published](#) the withdrawal in the *Federal Register*.

According to the document, HUD has identified that the proposed rule "[Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs](#)," issued on July 24, 2020, is inconsistent with the Executive Orders "[Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#)" and "[Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation](#)." Therefore, HUD has determined not to pursue this proposed rule and will proceed to formally withdraw it from HUD's upcoming Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions.

As you recall, the proposed modification to the 2016 portion of the Equal Access Rule would have allowed shelter providers that lawfully operate as single-sex or sex-segregated facilities to voluntarily establish a policy that would govern admissions determinations for situations when an individual's gender identity does not match their biological sex.



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